

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.207 of 2015

Abhay Kumar, son of Yamuna Singh, resident of Village- Barouli, Police Station- Narhat, District- Nawada. At present Address:- Abhay Kumar Auto Tech. MTTI, Air Force Station, Awadi, Chennai, Pin- 600055, Tamilnadu.

.... Appellant

Versus

Shobha Kumari, D/o- Ram Naresh Singh, resident of Village- Puri, Police Station- Giriak, District- Nalanda.

.... Respondent

Appearance :

For the Appellant : Mr. Manish Kumar No-2, Advocate.

For the Respondent : Mr. Ajay Kumar Thakur, Advocate.

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 08-03-2016

I.A. No. 5684 of 2015

The application is for condoning the delay of 12 days in filing the present appeal. Learned counsel for the respondent has no objection if the delay of 12 days in filing the appeal is condoned. The delay in filing the appeal is, accordingly, condoned.

2. I.A. No. 5684 of 2015 is, thus, allowed.

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1. The challenge in the present appeal by husband is to an order dated 24th of March, 2015, whereby an application for setting aside *ex parte* judgment and decree granted in a petition under Section 9 of the Hindu Marriage Act, 1955 (hereinafter referred to as “the Act”) was dismissed.

2. The respondent-wife filed a petition under Section 9 of the Act before the Principal Judge, Family Court, Nalanda which was allowed on 27th of May, 2014 when none appeared on behalf of the appellant.

3. The appellant filed a petition for dissolution of marriage under Section 13 of the Hindu Marriage Act, 1955 which now stands transferred to Principal Judge, Family Court, Biharsharif, Nalanda vide order dated 25th of April, 2013 passed by this Court in Miscellaneous Jurisdiction Case No. 3001 of 2012. It is admitted that the petition for

dissolution of marriage stands dismissed for default and that appellant intends to file an application for restoration of the said case.

4. The grievance of the appellant is that he filed an application for setting aside the decree passed under Section 9 of the Act and a petition for dissolution of marriage under Section 13 of the Act as well. Therefore, *ex parte* decree for restitution of conjugal rights be set aside as he was not served in the said case. The order passed by the learned trial court refusing to set aside such decree is illegal and on untenable grounds.

5. Learned counsel for the respondent-wife has no objection if the application is allowed and the order dated 25th of March, 2015 is set aside meaning thereby that she has no objection if the *ex parte* judgment and decree passed against the appellant is set aside.

6. In view of the fair concession of the learned counsel for the respondent, the order dated 24th of March, 2015 passed in Misc. Case No. 09 of 2014 and also the *ex parte* judgment and decree dated 27th of May, 2014 passed in Matrimonial Case No. 59 of 2012 is set aside. As a consequence thereof, the petition for restitution of conjugal rights stands restored.

7. The petitions under Sections 9 and Section 13 of the Act are required to be decided together. Since Section 13 petition stands dismissed for default, therefore, the present petition is restored to its original number but as and when Section 13 petition is restored, the same shall be transferred and be taken up for decision along with the petition under Section 9 of the Act.

8. With the aforesaid directions and observations, the appeal stands disposed of.

(Hemant Gupta, J)

(Ramesh Kumar Datta, J)

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