

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 27 of 2016

- Ritesh Gupta S/o Vinod Gupta, Aged About 30 Years R/o Radha Swami Nagar, Ring Road No.1, Near Siddeshwari Temple, Bhatagaon, Tahsil And District Raipur, Chhattisgarh

---- Petitioner

Versus

- Divorcee Sunita Gupta D/o Shivkailash Gupta, Aged 34 Years Occupation Government Shikshhakarmi Class-2, Village Devsundra, Post Sandi, Tahsil Palari, District Balodabazar, Chhattisgarh

---- Respondent

For Petitioner
For Respondent

Mr. Utkal Pradhan, Advocate
Mr. R. Pradhan, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board by

Prashant Kumar Mishra, J.

22/9/2016

1. Heard on IA No.01, an application for condonation of delay in filing the appeal.
2. The appeal filed under Section 28 of the Hindu Marriage Act, 1955 (in short "the Act, 1955"), is barred by 96 days.
3. The prayer for condonation of delay has been made on the ground that the applicant was under some wrong impression about the period of limitation, therefore, the delay in filing the appeal had occurred, which is bonafide.

4. Having considered the entire facts' situation of the case, IA No.01 is allowed and the delay in filing the appeal is condoned.
5. With the consent of learned counsel for the parties, the matter is heard finally at the admission stage.
6. The Family Court has rejected the appellant's application under Section 25 of the Act, 1955 for grant of permanent alimony/maintenance.
7. Admittedly, the marriage between the parties has been dissolved by a decree of divorce vide judgment and decree dated 02.05.2012. After the said judgment and decree, the appellant/husband moved the subject application under Section 25 of the Act, 1955 on the plea that although he has passed his Higher Secondary Examination yet he is unemployed, therefore, he having no source of income, is entitled to obtain maintenance from his wife respondent, who is working as Shikshakarmi-II earning monthly salary of Rs.12560/-.
8. On appreciation of the evidence led by both the parties, the Family Court has concluded that the appellant's father has lodged a complaint against the respondent for the offence under Sections 423, 465, 471. 467, 450 and 120-B of IPC; similarly a criminal complaint has been lodged by the appellant's mother against the respondent under the Protection of Women from Domestic Violence Act, 2005 , therefore, it cannot be assumed that the appellant is not residing in his house and is not able to maintain himself.
9. It appears, the petitioner is not having any regular job but

simultaneously, the appellant has also not proved the factum of he having no source of income by producing any other cogent evidence in the form of BPL ration card etc. He has neither produced any proof to the effect that in the absence of any income, he is granted any other assistance or allowance by the Government under any Welfare Scheme applicable to unemployed persons nor he has filed any medical certificate to prove that he is physically incapacitated to do any manual work to earn his livelihood.

10. The provisions contained in Section 25 of the Act, 1955 is to be invoked in favour of husband only when he suffers such incapacity, which has rendered him wholly unsuitable for doing any job. If the husband is able-bodied and is sufficiently educated, his application under Section 25 is not to be allowed on mere asking. If the application is allowed, every husband who is not in government job will move an application under Section 25 of the Act in all such cases where the wife is employed.

11. Considering the entire facts' situation of the case, this Court does not find any substance in this appeal, Therefore, the appeal is dismissed in limine.

Sd/-

Sd/-

Judge

Judge

(Prashant Kumar Mishra)

(Chandra Bhushan Bajpai)