

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2622 of 2012
Date of decision: 10.03.2017

Paramjit Kaur

....Appellant

Versus

Manjit Singh

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Vipin Mahajan, Advocate, for the appellant.

None for the respondent.

G.S. SANDHAWALIA, J.

CM-11385-CII-2012

The present application under Section 5 of the Limitation Act has been filed for condonation of delay of 459 days in filing the present appeal.

No reply has been filed to the said application.

In view of the averments made in the application, duly supported by the affidavit of the appellant, the same is allowed. The delay of 459 days in filing the appeal is condoned.

CM stands disposed of.

FAO-2622-2012

The present appeal is directed against the order dated 09.10.2010, whereby the Addl.District Judge, Gurdaspur dismissed the application, filed under Order 9 Rule 13 CPC, for setting aside the order dated 01.12.2004, vide which, *ex parte* divorce had been granted to the respondent-husband on the ground of cruelty.

The reasoning which weighed with the Court was that the application for setting aside the order was filed on 30.05.2005 and the date of knowledge was stated to be 22.04.2005. As per Article 123 of the Limitation Act, 1963, the same had to be filed within a period of 30 days. It was noticed that earlier an application, under the Limitation Act, had been filed but the same had been withdrawn on 09.02.2006. Resultantly, once the application itself had been withdrawn, as the same was filed beyond the period of limitation and therefore, was barred and accordingly, it was held that the application was belated and could not be entertained. Reliance was, accordingly, placed upon the judgment passed in **Mahabir Singh Vs. Subash & others 2008 (1) CCC 88 (SC)** to hold that the Court would have no jurisdiction to entertain any application if it had been filed after the expiry of the period of limitation.

A perusal of the record would go on to show that the parties were married on 07.04.1994, according to Sikh rites. The husband was in the Army and on account of non-consummation of the marriage, he had filed the petition for divorce on 26.07.2004, alleging various acts of cruelty over the period of more than 9 years which had passed. Service was effected by way of munadi and she was proceeded against *ex parte* on 02.11.2004 and eventually, on account of the evidence led by the husband and the evidence of 2 more witnesses, decree of divorce was granted on 01.12.2004.

In the application filed on 30.05.2005, it was alleged that a false report of service had been obtained by the husband and that the

summons had never reached the appellant. Along with the said application, as noticed, an application for condonation of delay was filed that the date of knowledge was 22.04.2005 and since a compromise was effected with the intervention of the respectables, that the husband would revoke the decree of divorce, the delay had occurred.

In the reply filed to the application, by the husband, plea taken was that the wife was fully aware of the divorce proceedings but had not put in appearance despite munadi. She wanted to harass the husband and had refused to accept the summons of the Court. The husband had re-married after the waiting period from the date of filing of the appeal. Similarly, in the reply to the application for condonation of delay, same defence was taken. It was further averred that under the pressure of the police and other influential persons, signatures were also procured of the appellant on blank papers and that the compromise had no validity and the delay could not be condoned. The applicant was clever lady and proclaiming herself to be a 'Devi'.

It has come on record that the husband had also got re-married with one Rajbir Kaur and was also blessed with a female child. One Bir Singh, RW2 was also examined who was the witness, as such, of the summons to be served upon the wife and she had refused to accept the same. For the reasons best known to the respondent, she withdrew her application under Section 5 of the Limitation Act, on 09.02.2006 and therefore, as per her application under Order 9 Rule 13 CPC, the averment of the date of knowledge of the divorce proceedings is

22.04.2005. It has been averred that she only came to know when she was threatened that she would be thrown out of the matrimonial home and it was only on 22.04.2005, she came to know. Thus, the date of limitation was a period of 1 month but the application was only filed on 30.05.2005. A perusal of the affidavit attached would also go on to show that there was a cutting, as such, on the date and the affidavit in support is attested on 28.05.2005 and therefore, the application, as such, has been filed and prepared and the affidavit was prepared earlier. Similarly, the date of application under Section 5 has also been corrected to 30.05.2005 whereas the affidavit is attested on 28.05.2005.

In such circumstances, this Court is of the opinion that the observations of the Apex Court in **Mahabir Singh's case** (supra) would be directly applicable in the facts and circumstances and especially in view of the fact that the application for limitation for condoning the delay, has been withdrawn and if that is so, the application filed was beyond the period of 30 days from the date of knowledge, which was 22.04.2005 and resultantly, the Court below was well justified in dismissing the application on the ground of limitation itself. Even otherwise, once it has come on record that she refused to accept the summons and stayed back from the proceedings and was aware of the proceedings, as such, there was no sufficient cause, as such, to set aside the *ex parte* divorce proceedings.

Accordingly, keeping in view the cumulative facts, this Court is of the opinion that the impugned order, as such, does not suffer

from any legal infirmity or irregularity which would warrant interference in appeal. Therefore, the reluctance of the Court below to interfere and set aside the *ex parte* decree of divorce dated 01.12.2004, cannot be, as such, faulted with, in the absence of any sufficient cause being shown as to why the Section 5 application was withdrawn. Resultantly, the present appeal is, hereby, dismissed.

10.03.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No