

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CM-7327-CII-2017 IN/and
FAO-M-93-2017 (O&M)

Date of Decision: 10.5.2017

Rama Nand

....Appellant

Versus

Simla Devi

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU.**

PRESENT: Mr. Ashish Yadav, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1 Having remained unsuccessful before the Additional District Judge, Rewari in a petition under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955 (in short “the Act”) for dissolution of marriage by a decree of divorce, the appellant has approached this Court by way of instant appeal challenging the judgment and decree dated 18.12.2013.

2. A few facts necessary for adjudication of the present appeal as narrated therein may be noticed. The marriage between the parties was solemnized on 19.6.1992 at village Manpur Golaheera, Tehsil Mundawar, District Alwar (Rajasthan) according to Hindu rites and ceremonies. From the said wedlock, two children were born, namely, Sachin and Vinod Kumari. Two elder sisters of the respondent were already married with the brothers of the appellant. The respondent was a lady of quarrelsome nature and used to pick quarrels with the appellant and his parents. After March 2007, the act and conduct of the respondent was not cordial and cooperative and she had no interest in the appellant and his parents and was living

separately with the appellant and her children at village Rudh. The brother of the appellant and brother-in-law of the respondent, namely, Shri Baljeet had inimical relations with the appellant on account of property and family dispute and the respondent had left the company of the appellant without any reasonable cause at the instance of Shri Baljeet and started living along with her children and said Baljeet at Rewari. The appellant and other respectables and relatives requested the respondent to live with the appellant but she refused to do so. In this way, the respondent had treated the appellant with cruelty. Accordingly, the appellant filed a petition under Section 13(1)(ia) and (ib) of the Act for dissolution of marriage by a decree of divorce. Upon notice, the respondent had contested the said petition by filing written statement. Besides raising various preliminary objections, it was pleaded therein that till date the respondent was living at the given address but the appellant was not living at the given address. In the year 1999, at the time of marriage and Gona ceremony, the parents of the respondent had given sufficient dowry to the appellant but he and his parents were not satisfied with the dowry and they pressurized and taunted the respondent for bringing less dowry and demanded more dowry. In the year 2003, when the respondent was pregnant, the appellant and his parents demanded a car in Chhuchhak and on her showing inability to fulfil their demand, they started cruel behaviour towards the respondent. On 7.5.2008, the appellant and his family members again started quarreling and torturing the respondent on account of dowry and her father-in-law asked the appellant to finish her upon which he had put kerosene oil on her but she escaped herself from the appellant and his parents. A complaint in this regard was also made to the police. Similar incident was repeated on

8.5.2008 at about 6.00 PM and on raising an alarm, the respondent was rescued from the clutches of the appellant and his parents by her sister Shakuntla. She was brought to Civil Hospital, Rewari and was medico legally examined. A complaint was also lodged in this regard. However, when no action was taken on the said complaint, the respondent filed a criminal complaint before the Chief Judicial Magistrate, Rewari which was pending. The other averments made in the petition were denied and a prayer for dismissal of the same was made. The appellant filed rejoinder controverting the averments made in written statement and reiterated those made in the petition. From the pleadings of the parties, the trial Court framed the following issues:-

1. Whether the petitioner is entitled for a decree of divorce on the grounds as mentioned in the petition? OPP
2. Whether the petition is not maintainable? OPR
3. Relief.

3. The appellant was afforded an opportunity to lead his evidence but he failed to do so and the evidence of the appellant was closed by the Court order. The trial Court after hearing the arguments of the parties held that the appellant had failed to prove that he was entitled to a decree of divorce on the grounds as alleged in the petition. Accordingly, the trial Court vide judgment and decree dated 18.12.2013 dismissed the petition filed under Section 13(1)(ia) and (ib) of the Act. Hence, the present appeal. Since the appeal is barred by time, an application under Section 5 of the Limitation Act, 1963 (for brevity “1963 Act”) for condonation of 1102 days' delay has been filed.

4. We have heard learned counsel for the appellant.
5. The primary and foremost question that arises for consideration in this appeal is whether there is sufficient cause for condonation of colossal delay of 1102 days in filing the appeal before this Court.
6. Examining the legal position relating to condonation of delay under Section 5 of the 1963 Act, it may be observed that the Supreme Court in **Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and another, (2010) 5 SCC 459** laying down the broad principles for adjudicating the issue of condonation of delay, in paras 14 & 15 observed as under:-

“14. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

15. The expression “sufficient cause” employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to

apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate-Collector (L.A.) v. Katiji N. Balakrishnan v. M. Krishnamurthy and Vedabai v. Shantaram Baburao Patil.”

7. It was further noticed by the Apex Court in **R.B. Ramlingam v. R.B. Bhavaneshwari 2009(1) RCR (Civil) 892** as under:-

“.....It is not necessary at this stage to discuss each and every judgment cited before us for the simple reason that Section 5 of the Limitation Act, 1963 does not lay down any standard or objective test. The test of “sufficient cause” is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of limitation has left the concept of “sufficient cause” delightfully undefined, thereby leaving to the Court a well-intentioned discretion to decide the individual cases whether circumstances exist establishing sufficient cause. There are no categories of sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique experience to be dealt with by the Court as such.”

It was also recorded that:-

“For the aforestated reasons, we hold that in each and every case the Court has to examine whether delay in filing the special leave petition stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition....”

8. From the above, it emerges that the law of limitation has been enacted which is based on public policy so as to prescribe time limit for availing legal remedy for redressal of the injury caused. The purpose behind enacting law of limitation is not to destroy the rights of the parties but to see that the uncertainty should not prevail for unlimited period. Under Section 5 of the 1963 Act, the courts are empowered to condone the delay where a party approaching the court belatedly shows sufficient cause for not availing the remedy within the prescribed period. The meaning to be assigned to the expression “sufficient cause” occurring in Section 5 of the 1963 Act should be such so as to do substantial justice between the parties. The existence of sufficient cause depends upon facts of each case and no hard and fast rule can be applied in deciding such cases.

9. The Apex Court in **Oriental Aroma Chemical Industries Ltd. and R.B. Ramlingam's cases (supra)** noticed that the courts should adopt liberal approach where delay is of short period whereas the proof required should be strict where the delay is inordinate. Further, it was also observed that judgments dealing with the condonation of delay may not lay down any standard or objective test but is purely an individualistic test. The court is required to examine while adjudicating the matter relating to condonation

of delay on exercising judicial discretion on individual facts involved therein. There does not exist any exhaustive list constituting sufficient cause. The applicant/petitioner is required to establish that inspite of acting with due care and caution, the delay had occurred due to circumstances beyond his control and was inevitable.

10. According to the learned counsel for the appellant, the appellant had asked his counsel regarding the status of the petition but he was informed that the matter was still pending and he would be informed as and when his presence and evidence was required. In this process, almost three years had elapsed. In November, 2016, the appellant went to the District Court and inquired about his petition wherein he was informed that his petition had been dismissed. Thereafter, the appellant collected the papers and the copy of the judgment and approached the counsel for filing the appeal in this Court. In March, 2017, the appellant engaged the present counsel for filing the appeal in this Court who filed the appeal on 24.3.2017. Since the appeal was barred by time, an application bearing CM-7327-CII-2017 for condonation of 1102 days' delay has been filed. It was urged that the delay, if any, has occurred in the aforesaid circumstances in filing the appeal before this Court. Learned counsel further argued that the delay was unintentional and due to the circumstances beyond the control of the appellant.

11. Adverting to the factual matrix in this case, we do not find any merit in the application for condonation of delay. The question regarding whether there is sufficient cause or not depends upon each case and primarily is a question of fact to be considered taking into totality of events which had taken place in a particular case. In the present case after

appreciating the matter it cannot be said that there was sufficient cause for condonation of delay. The trial court had decided the matter on 18.12.2013. However, the appeal before this Court was required to be filed within the stipulated period of limitation. But the appellant filed the appeal before this Court after an inordinate delay of 1102 days. The facts and particulars mentioned in the application filed under Section 5 of the 1963 Act is general in nature and does not contain the details on the basis of which it could be concluded that the appellant was vigilant in pursuing the litigation whereas the counsel had defaulted and was negligent. In the absence of any details filed by the appellant, the plea for condonation of delay is bereft of sufficient cause for the delay in filing the appeal. In view of the above, we do not find any merit in the application for condonation of 1102 days' delay in filing the appeal.

12. Incidentally, even otherwise, the trial Court had held that the appellant had failed to produce any evidence in support of his averments. Further, he himself had not stepped into the witnesses box to substantiate his averments. On his failing to prove that he was entitled to a decree of divorce, the trial Court had dismissed the petition filed under Section 13(1) (ia) and (ib) of the Act. Accordingly, the application for condonation of delay as well as the appeal are hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

May 10, 2017
gbs

(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes