

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.514 of 2016

Chitra Rekha Devi, W/o Shri Ravishankar Kumar (D/o Abhinandan Singh),
R/o Chainpur, P.S. Dhaka, District - East Champaran, Motihari, presently
residing at C/o Abhinandan Singh, R/o Vill. Jhauaram, P.S. Dhaka, District -
East Champaran, Motihari.

... .. Appellant/s

Versus

Ravi Shankar Kumar, S/o Shri Yadav Lal Singh, R/o Vill Chainpur, P.S.
Dhaka, District - East Champaran, Motihari.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Zaki Haider
For the Respondent/s : Mr. Sanjay Kumar

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 08-02-2019

Re. I.A. No. 4544 of 2016

This Interlocutory Application is filed for
condonation of delay of one year three months in filing the
appeal under section 19(1) of the Family Courts Act, 1984.

The prayer for condonation of delay is opposed by
learned counsel appearing on behalf of the respondent, as
according to him, despite knowledge of the petitioner regarding
the consent decree yet the delay has occurred.

Having heard learned counsel for the parties and
having considered the reasons assigned in the interlocutory
application, we are satisfied to allow the prayer and condone the



delay in filing the appeal.

Accordingly, delay is condoned and I.A. No. 4544 of 2016 is allowed.

Re : M.A. No. 514 of 2016

This appeal under section 19(i) of the Family Courts Act arises from the consent decree passed by the Family Court, East Champaran, Motihari in connection with Divorce Case No. 167 of 2014, whereby on an application filed by the parties contesting herein under section 13(B) of the Hindu Marriage Act, 1955, the Family Court after recording the evidence of the parties, has been persuaded to dissolve the marriage on mutual consent so expressed. According to the appellant, the entire proceeding has been manufactured by the respondent by misleading the appellant.

Mr. Zaki Haider, learned counsel for the appellant, submits that respondent by practicing fraud has obtained the consent from the petitioner even while, the parties were living together and hence, this appeal.

Opposing the appeal Mr. Sanjay Kumar, learned counsel appearing for the respondent in reference to the evidence of the appellant recorded in the Court below submits that it is on her consent expressed that the decree was passed.



We have heard learned counsel for the parties and perused the records. The consent decree is being questioned on allegation of fraud practiced by the sole respondent.

The appellant may have valid reason to raise such issue to question the consent decree but considering that an allegation of fraud is an issue of fact which needs to be established by means of evidence and cannot be decided on inter party affidavits at the stage of appeal, which is to be decided on the basis of materials on record and the evidence adduced by the parties in the Court below, as prayed, we allow the appellant to take recourse to such remedy as available to her, in law, for establishing the plea of fraud which led to the consent decree, if so advised.

With the observation above, we dispose of this appeal, while making it clear that we have not expressed any opinion on the ground so set up by the appellant to question the decree.

(Jyoti Saran, J)

Shailendra/-

(Arvind Srivastava, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA

