

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.848 of 2017

Anju Kumari Wife of Rishikant Sharma @ Chikku Sharma, Resident of Village- Gopalpur, P.S.- Masaurhi, District- Patna, Presently residing with her Father namely Janardan Singh, resident of Village- Dhokhara, P.S.- Sigoli Paliganj District Patna.

... .. Appellant/s

Versus

Rishikant Sharma @ Chikku Sharma Son of Sri Shiv Kishore Sharma, Resident of Village- Gopalpur, P.S.- Masaurhi, District- Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Harsh Anuj
For the Respondent/s : Mr.Niraj Kumar

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 16-08-2019

RE:-I.A. No. 6831 of 2017/1 of 2017

The above mentioned Interlocutory Application has been filed with a prayer for condonation of delay of 85 days in filing the present appeal.

Learned counsel for the respondent has no objection in condonation of delay in filing the present miscellaneous appeal.

Considering the present stand of the learned counsel for the respondent as well as the ground taken in the limitation



petition showing sufficient cause for not filing the present miscellaneous appeal within stipulated time, delay of 85 days in filing the present miscellaneous appeal is condoned.

Accordingly, I.A. No. 6831 of 2017/1 of 2017 is disposed of.

RE:-M.A. No. 848 of 2017

The present Miscellaneous Appeal has been filed for setting aside the order dated 05.05.2017, passed in Matrimonial Case No. 291 of 2010, by learned Additional Principal Judge, Family Court, Patna, whereby the matrimonial suit, filed by the respondent for decree of divorce on dissolution of marriage, on the ground of cruelty and desertion, has been dismissed due to the non-appearance of the plaintiff/respondent and on the prayer made by defendant/appellant, by resorting to provision under Order 9 Rule 8 of the C.P.C.

Learned counsel for the appellant submits that the appeal has basically been filed for getting the interim maintenance in pursuance to the order dated 06.04.2015, passed under Section 24 of the Hindu Marriage Act, 1956 during pendency of aforementioned matrimonial suit.

However, learned counsel for the respondent submits that for restoration of matrimonial suit an application



under Order IX Rule 9 of the C.P.C., was filed but the same has been dismissed for default, though, a fresh application under order IX, Rule 9 of the C.P.C., is still pending.

This Court is not inclined to entertain the present miscellaneous appeal on two grounds, firstly since the impugned order was passed on the prayer of the appellant and secondly, since the plaintiff/respondent has taken resort to restoration of matrimonial suit by filing applications under Order IX Rule 9, C.P.C. and one of such application is still pending.

However, the appellant is entitled for getting interim maintenance pendente lite under Section 24 of the Hindu Marriage Act, 1956 in terms of the order dated 06.04.2015, passed under Section 24 of the Hindu Marriage, Act, 1956 till the suit is dismissed, i.e., 05.05.2017.

There is nothing on record to suggest that the appellant has filed any such application before the learned Court below.

If any such application is filed by the learned appellant, the Court concerned will take a decision on the same and dispose of the same within a period of six weeks from the date of receipt/production of a copy of this order.



Accordingly, the present Miscellaneous Appeal is
disposed of.

(Dinesh Kumar Singh, J)

(Arvind Srivastava, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	03.02.2020
Transmission Date	

