

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 149 of 2019

- Smt. Arti Hemnani W/o Shri Abhishek Hemnani Aged About 29 Years D/o Shri Umesh Pradnani, R/o 30/1067, Savitri Sadan, Raigarh Bada, Civil Line, Raipur, District Raipur Chhattisgarh

---- Appellant

Versus

- Abhishek Hemnani S/o Rajkumar Hemnani Aged About 34 Years R/o 29/33, Sagar Kiran Krishnachandra Road, Near Leelawati Hospital, Reklamention, Bandra West, Mumbai., District : Mumbai, Maharashtra

--- Respondent

For Appellant : Mr. Sakib Ahmed, Advocate.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

03/12/2019

1. Heard on application (I.A. No.1) for condonation of delay in filing the appeal.
2. In view of order dated 30.09.2019 passed by this Court in FAM No.53 of 2019 (Preeti Meshram Vs. Himanshu Wasnik), wherein, it has been held that the period of limitation for filing appeal against judgment and decree passed by the Family Court in respect of the matter arising under Hindu Marriage Act, would be 90 days and not 30 days. Therefore, this appeal is to be treated within limitation.
3. Challenge is to order dated 30.03.2019 passed by the learned Principal Judge, Family Court, Raipur (C.G.) in case No. HMA/463/2018, wherein, application for grant of decree of divorce on the basis of mutual consent has been dismissed.
4. Learned counsel for the appellant would argue that the respondent having agreed to take divorce by mutual consent and having filed application under

Section 13(B) of the Hindu Marriage Act, 1955 (for short 'the Act of 1955'), he did not appear before the Court below. He submits that if the respondent was not appearing, the Court should have taken coercive steps against him by directing his personal appearance.

5. Having considered the submission of learned counsel for the appellant, we are not convinced.
6. The parties admittedly moved application under Section 13(B) of the Act of 1955 for grant of decree of divorce by mutual consent. However, the order sheet clearly records that the respondent is not appearing in these proceedings and had expressed that he is not willing to go ahead for proceedings by grant of decree of divorce by mutual consent. In that view of the matter, learned Court below was left with no option but to reject the application.
7. We do not find any legality in the order of the Court below. The appeal is, therefore, dismissed. We, however, observe that in case, the respondent is willing to obtain decree by way of mutual consent, the appellant and the respondent may revive their application by filing joint application before the learned Family Court for recall of the order. Learned Family Court shall pass appropriate order in accordance with law.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge