

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 278 of 2018**

1. Jeevan Lal Barman, S/o Late Sukhram Barman, Aged About 42 Years
R/o Babaspur, Tehsil And District Korba Chhattisgarh.

---- Petitioner

Versus

1. Smt. Pritima Barman, W/o Jeevenlal Barman Aged About 34 Years,
R/o Ramnagar, Ward No. 12, Tehsil - Baloda, District Janjgir Champa
Chhattisgarh.

Amendment Address - Smt. Pritima Barman, W/o Jeevenlal Barman,
Village - Chhattisgarh Ayravigyan Sansthan Sims, Hospital, Bilaspur,
P.S. Civil Lines, Tehsil - Bilaspur, District Bilaspur Chhattisgarh.

---- Respondent

For Appellant:-	Shri Jitendra Gupta, Advocate.
For Respondent:-	Shri Avinash Chand Sahu, Advocate.

Hon'ble Justice Shri Prashant Kumar Mishra**Hon'ble Justice Smt. Vimla Singh Kapoor****Judgment On Board****By****Prashant Kumar Mishra, J.****21/02/2019**

1. This appeal is directed against the impugned order passed by the Family Court dismissing the appellant's application under Order 9 Rule 9 of the Code of Civil Procedure, 1908 (for short 'the C.P.C.') as also the application under Section 5 of the Limitation Act for condonation of delay in moving the application under Order 9 Rule 9 of the C.P.C.

2. The appellant preferred civil suit No. 55 A/2012 before the Family Court, Janjgir-Champa, for grant of divorce. The suit was dismissed for want of prosecution on 20.06.2013. Thereafter, the appellant preferred another suit of similar nature before the Family Court, Korba. This suit was dismissed, as the same was hit by the principles of *res judicata* under Section 11 of the C.P.C.
3. In his appeal before this Court bearing FAM No. 13/2015 this Court by order dated 02.03.2015 observed that the subsequent suit has rightly been dismissed and that the appellant may avail the remedy available to him in law.
4. The appellant thereafter, moved the subject application under Order 9 Rule 9 of the C.P.C. on 11.05.2015 i.e., within three months from 02.03.2015, when his FAM No. 13/2015 was dismissed by this Court.
5. Having heard learned counsel for the parties in respect of the legality and validity of the impugned order, we are convinced that the Family Court has adopted a hyper technical and pedantic approach while dismissing the application under Section 5 of Limitation Act, as also the application under Order 9 Rule 9 of the C.P.C. The appellant seems to have been wrongly advised by the counsel for preferring second suit which was not maintainable in law, however, that fact would not debar the appellant to move an application under Order 9 Rule 9 of the C.P.C. The delay in moving the application occurred because in the meanwhile appellant was prosecuting his subsequent suit and thereafter FAM No.13/2015 before this Court.

6. In matrimonial matters the entire life of a person is involved, therefore, there is no harm if the application for divorce or any other issue under the Hindu Marriage Act is considered by the Family Court on merits.
7. Considering the entire facts situation of the case, we are of the considered view that the delay in filing the CMJC should have been condoned by the trial court. We Accordingly, allow both the applications filed by the appellant before the Family Court; set-aside the impugned order; and restore civil suit No.55-A/2012 to its original number subject however, to payment of cost of Rs.5,000/- payable to the respondent/wife within a period of three months from today. The trial court shall proceed to try the suit only after the above stated cost is deposited by the appellant.
8. In the result the First Appeal is allowed to the extent indicated above.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge

Ayushi