

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-3306-2019 (O&M)
Date of Decision: 17.05.2019

Suman

. Appellant

Vs.

Mahabir Singh

. Respondent

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE HARNARESH SINGH GILL

Present: - Mr.Sandeep Goyal, Advocate,
for the appellant.

RAKESH KUMAR JAIN, J.

This appeal is at the instance of the appellant-wife against the judgment and decree dated 16.9.2017 passed on a petition jointly filed by both the parties under Section 13B of the Hindu Marriage Act, 1955 [for short 'the Act'], granting them a decree of divorce by mutual consent.

In brief, marriage of the appellant with the respondent was solemnized on 8.12.1990 at Karnal as per Hindu rites and ceremonies. They were blessed with a female child, namely, Heena. However, they started living separately since 19.11.2009 and decided to dissolve their marriage by way of mutual consent and filed the petition under Section 13B of the Act for dissolution of their marriage by way of mutual consent on payment of ₹14 lakh in lumpsum for the past, present and future maintenance. The statement of both the parties were recorded before the Court at both the stages i.e. at the first motion stage and at the second motion stage and the amount of ₹14 lakh were duly paid. The Family Court thereafter passed the decree on 16.9.2017.

The present appeal is filed along with an application under Section 5 of the Limitation Act, 1963 for condonation of delay of 492 days in filing the appeal. It is averred in the application that after the decree was passed on 16.9.2017, copy of the order was applied on 18.9.2017 which was prepared and delivered on 26.9.2017. It is averred in the application that the appellant was under depression because false matrimonial cases were pending against her. She was also under the impression that her daughter can claim maintenance and filed a petition under Section 125 of the Code of Criminal Procedure, 1973 [for short 'the Cr.P.C.'] on her behalf which was contested by the respondent on the ground that since full and final payment has been made therefore, she cannot claim the maintenance, hence, has filed this appeal in which delay of 492 days has been caused. Besides the application for seeking condonation of delay in filing the appeal there is another application on record which is filed by the appellant for seeking condonation of delay of 29 days in refiling of the appeal.

We have heard learned counsel for the appellant and after perusing the record, are of the considered opinion that even if the delay in refiling of the appeal is condoned, the delay of 492 days in filing of the appeal cannot be condoned because no sufficient ground has been made out by the appellant. Even otherwise the present appeal has been preferred against the judgment and decree which has been passed under Section 13B of the Act after recording the statements of both the parties, twice giving them sufficient time to re-think about their decision and on payment of ₹14 lakh as agreed between them.

In view of the aforesaid, we do not find merit either in the application for condonation of delay or in the appeal, therefore, while dismissing the application, the appeal is also hereby dismissed.

No costs.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

17.05.2019
Vivek

Whether speaking /reasoned : *Yes/No*
Whether Reportable : *Yes/No*