

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 216 of 2017**

- Sangya Agrawal W/o Anand Prakash Agrawal, D/o Dwarika Prasad Agrawal, R/o Mitra Vihar, Bilaspur, District Bilaspur Chhattisgarh

---- Appellant**Versus**

- Anand Prakash Agrawal S/o K. K. Agrawal, R/o H. I. G. 2/5 Sector-3, Deendayal Upadhyay Nagar, Raipur, Tahsil And District Raipur Chhattisgarh, Temporary Address C/o K. K. Agrawal, H I G 2/12, Sector 1, Deendayal Upadhyay Nagar, Raipur, Tahsil And District Raipur Chhattisgarh

--- Respondent

For Appellant	:	Mr. Varun Sharma, Advocate.
For Respondent	:	Mr. B.P. Sharma, Advocate.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order On Board****13/07/2020**

1. Heard on application for condonation of delay in filing appeal. According to office report, this appeal is barred by 532 days.
2. Learned counsel for the appellant argued that the delay in filing appeal is bona fide and not deliberate. It is argued that initially, an application was filed in which, details were given and later on, the appellant was permitted to file additional affidavit in support of application for condonation of delay in filing appeal and in the additional affidavit, the appellant has elaborately stated the cause why appeal could not file within the period of limitation. It is submitted that after having received copy of decree dated 25.04.2016, the appellant was shocked and found herself in a state of hopelessness and therefore, depressed. She became anxious regarding future of her daughter, aged 12 years. Her parents are old aged and required continuous medical attention. The appellant had no money to attend the legal expenses. Appellant's father was operated for Cancer in the year 2009 and mother underwent heart surgery in the year 2015. Therefore, appellant's energy, resources and

attention were mostly towards care of her parents and growing daughter. She was initially advised to file a review petition. She however, could not arrange money for legal expenses and due to lack of financial resources, she could not gather courage to contact her counsel. Thereafter, advice was taken from other family friends due to non-availability of her main counsel. While she was searching for a new lawyer and lost hope that she will ever be able to fight the case, she received a copy of application for custody of daughter filed by the husband in March, 2017. It shocked her that now the respondent is trying to take revenge by trying to snatch the daughter away. The FIR was lodged against her on 30.03.2017 and thereafter, upon legal advice, decided to file appeal. Learned counsel for the appellant prayed that a liberal view may be taken in the interest of justice and opportunity may be provided to contest the matter on merits. If she is not afforded any opportunity, she may even lose her right to maintenance. Even if, the husband has contracted second marriage, it does not frustrate appellant's right to file appeal. Reliance has been placed on the judgments of the Hon'ble Supreme Court in the cases of **Ram Nath Sao @ Ram Nath Sahu and Others Vs. Gobardhan Sao and Others, (2002) 3 SCC 195, Smt. Lata Kamat Vs. Vilas, (1989) 2 SCC 613 and Shamima Farooqi Vs. Shahid Khan, (2015) 7 SCC 705.**

3. On the other hand, learned counsel for the respondent opposes prayer for condonation of delay in filing appeal by submitting that the conduct of the appellant clearly shows that the appellant had decided not to challenge the decree of divorce, and therefore, despite having come to know and obtained copy of judgment and decree in April, 2016 itself, did not file any appeal. It was only when the respondent-husband started taking remedy for custody of minor daughter that as a counter-blast, now the appellant has filed this appeal without any sufficient cause. He would further argue that initially, when application for condonation of delay was filed, the appellant stated in application that she was not having knowledge about the remedy against the judgment and decree passed by the Family Court and that she was not aware of the consequences of decree of divorce and it is only when appellant came to know that the respondent is trying to perform second marriage, appeal is being filed. However, when additional affidavit has been filed, entirely new grounds have been taken. It is argued that additional affidavit could only to explain the details and particulars of the ground already taken and not liberty to come out with entirely new grounds. He would further submit that the

explanation offered by additional affidavit are far from being sufficient. Neither appellant is financially weak nor a rustic villager. The respondent has contacted second marriage and it is not a case that respondent contacted marriage during the pendency of the appeal. He would submit that the judgment and decree was passed on 12.04.2016 and second marriage was solemnized on 26.07.2016, that is, after more than three months and by that time, no appeal was filed. Even according to the appellant, she obtained copy of the impugned judgment and decree on 25.04.2016. Therefore, in such a case, the appellant is not entitled to seek any protection of Section 15 of the Hindu Marriage Act as marriage has been solemnized after the period of limitation. The respondent's case is supported from the verdict of the Supreme Court in the cases of **Lila Gupta vs Laxmi Narain & Ors, (1978) 3 SCC 258**, **Parveen Mehta Vs. Inderjit Mehta, (2002) 5 SCC 706** and **Krishnaveni Rai Vs. Pankaj Rai & Another, (2020) SCC Online SC 225**.

4. We have heard learned counsel for the parties.
5. This appeal has been reported to be barred by 532 days. In view of the order of this Court passed on 30.09.2019 in **FAM No.53 of 2019 (Preeti Meshram Vs. Himanshu Wasnik)**, as the period of limitation for filing appeal is to be taken as 90 days in that case also, the appeal is barred by about 470 days. Initially, when application for condonation of delay was filed, all that was stated in the application was that the appellant was not having knowledge of the remedy against the judgment and decree passed by the Family Court and the appellant was not aware about the consequences of decree of divorce and when she came to know that the respondent is going to perform second marriage, appeal is being filed. However, when the appellant was granted time to file additional affidavit, the appellant has come out with different grounds, which appear to be more an afterthought. Appellant belongs to affluent class of society and according to her own statement, in the affidavit, appellant has not disputed that appellant was running coaching classes but she has come out with the case that the earning is not sufficient to maintain herself and her daughter. That means, the appellant is highly educated, therefore, the ground initially taken in the application for condonation of delay that she is not aware about consequences of decree of divorce, cannot be accepted. Moreover, even if it is accepted that her parents are ailing, there is hardly any justification for such a long delay of about 470 days in filing appeal. Learned counsel for

the respondent is correct in submitting that it is only when the appellant received notice of proceedings relating to custody of child and certain criminal cases were instituted then only the appellant decided to file appeal. In para-9 of her additional affidavit, she stated that she had lost her hope that she will ever be able to fight the case. But for initiation of custody proceedings by the respondent, the appellant had waived her right to file an appeal. Applied by any liberal standards, all the statements made in the affidavit would not constitute sufficient cause to condone delay for such a long delay, particularly when in the meantime, the respondent has contacted second marriage. Second marriage was performed more than three months after the appellant received the copy of judgment and decree of divorce, she sat over the matter for very long time and condoning delay at this stage to reopen, in these circumstances, would not be proper. Though, both the parties have come out with the judgment dealing with impact of provisions contained in Section 15 of the Hindu Marriage Act over marriage solemnized after decree of divorce in different circumstances and fact situations, we need not go into those legal aspects because we are not dealing with maintainability of appeal. But we have to take into consideration solemnization of marriage as one of the considerations why we are not inclined to condone such a long delay which otherwise hardly stands explained by the appellant. More so, we find that the appellant has filed this appeal only as a counter-blast when she received notice relating to institution of custody proceedings relating to girl child by her husband in the month of March, 2017.

6. In view of above consideration, we are not inclined to condone the delay in filing appeal. Application for condonation of delay in filing appeal is accordingly rejected and the appeal is dismissed as barred by limitation.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge