

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.2683 of 2019

In
Miscellaneous Appeal No.306 of 2015

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Nita Devi, Kapildeo Chaudhary, Resident of Village- Mangarbigha, Police Station- Giriyak, District- Nalanda.

... .. Petitioner/s

Versus

Kapildeo Chaudhary, son of Late Darogi Chaudhary, Resident of Village- Mangarbigha, Police Station- Giriyak, District- Nalanda. At posted as Branch Manager, Madhya Bihar Gramin Bank Rupal (Nawada), District- Nawada.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Sunil Kumar, Advocate

For the Opposite Party/s : Mr.Hansraj, Advocate

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CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE A. M. BADAR)

4 29-06-2022 **I.A. No. 01 of 2020**

This is an application for condonation of delay in
filing an application for restoration of Miscellaneous Appeal
No. 306 of 2015.

Heard both sides.

According to the learned counsel for the respondent
herein, the delay has not been sufficiently explained and
therefore, the application deserves to be rejected.

We have considered the submissions so advance.

The divorce petition filed by the respondent came to
be allowed ex parte and that is how the applicant had filed



Miscellaneous Appeal No. 306 of 2015 for setting aside that decree of divorce. However, unfortunately the Miscellaneous Appeal was rejected for want of prosecution by this Court on 25.04.2019.

The delay occasioned in approaching this Court for restoration is reportedly of 45 days. The same is sufficiently explained in paragraphs 5 and 6 of the application.

Hence for the stated reason, the delay is condoned. The Interim Application No. 01 of 2020 is accordingly allowed.

M.J.C. No. 2683 of 2019.

This is an application for restoration of M.A. No. 306 of 2015 filed by the original respondent seeking quashment of the Judgment and decree passed by the Family Court by which divorce petition filed by the respondent therein came to be decreed.

The Miscellaneous Appeal filed by the wife was rejected by this Court because of none appearance of the counsel for both the parties vide order dated 25.04.2019.

When the present Miscellaneous Jurisdiction Case came up hearing before this Court, both the parties have shown their inability to work out the matter.

Considering the nature of application, we refused



adjournment and we ourselves have perused the contentions raised in the present Miscellaneous Jurisdiction Case.

From perusal of the application, we are of the opinion that the learned counsel for the applicant was prevented by sufficient cause in none appearing before this Court when the application was called out for hearing. In the similar way, even the counsel for the respondent herein was also absent when the matter was called out for hearing.

Primary function of the Court is to adjudicate the dispute on its own merits rather than adhering to the technicalities of law. Hence in order to further the cause of substantial Justice, we are of the considered opinion that the legality and correctness of decree of divorce needs to be tested by this Court and therefore the order:-

The Miscellaneous Jurisdiction Case No. 2683 of 2019 is allowed. Miscellaneous Appeal No. 306 of 2015 is restored to its original file by recalling the order of dismissal.

(A. M. Badar, J)

Bhardwaj/-

(Prabhat Kumar Singh, J)

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