



\$~17

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 29th August, 2023*

+ **MAT.APP.(F.C.) 82/2023 & CM APPLs. 51513/2018, 51515/2018**

MANPREET KAUR Appellant

Through: Mr. Gurbaksh Singh, Advocate with
appellant.

versus

PUSHPINDER SINGH Respondent

Through: Mr. Yatharth Singh (Amicus Curiae).

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CM APPL. 51515/2018 (under Section 5 of the Limitation Act for
condonation of delay in filing CM APPL. 51513/2018)

1. For the reasons stated in the present application, delay in filing the application for recalling of the order dated 11.12.2017 and restoration of the Appeal is condoned.

2. The application is disposed of.

CM APPL. 51513/2018 (for recalling of the order dated 11.12.2017 &
restoration of the Appeal)

3. An application under Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) had been filed by the appellant for recalling of the Order dated 11.12.2017 *vide* which the present Appeal was withdrawn and for restoration of the Appeal which may be decided on



merits.

4. The learned Principal Judge, Family Courts had granted divorce to the parties vide the judgment and decree of divorce dated 01.07.2010 in HMA No.39/2010. The Appeal under Section 28 of the Hindu Marriage Act, 1955 (*hereinafter referred to as the 'Act of 1955'*) was filed by the appellant before this Court which was withdrawn on 11.12.2017.

5. It is stated in the present application for restoration of Appeal that during the pendency of the Appeal, she had filed a petition under Section 125 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'CrPC'*) which was pending in the Court of learned Judge, Family Courts, Tis Hazari. During the proceedings before the Court of learned Judge, Family Courts, Tis Hazari, the difference between the parties were resolved and they expressed their desire to live together as recorded in the Order dated 02.01.2015. Thereafter, the appellant and the respondent started residing together in the matrimonial home. The respondent/husband however, expired on 29.10.2015.

6. After the demise of the respondent/husband, on the application of the appellant, the daughter of the parties Ms.Maneet Kaur being the legal heir of the respondent, was impleaded as a party vide Order dated 31.01.2017.

7. It is asserted in the application that as the appellant had started co-habiting with her husband i.e. the respondent pursuant to the Settlement recorded in the Order dated 02.01.2015, she was under the impression that her marriage with her husband has got restored and she is legally wedded wife. However, on the ill advice of her counsel, she withdrew the Appeal on 11.12.2017. At the time of withdrawal, she did not consider any legal



impediment in withdrawal of the appeal. She was under the impression that by withdrawal of the Appeal, her marital status with the respondent shall get restored and therefore, without getting the decree of divorce set aside, she withdrew her Appeal.

8. It is asserted that taking advantage of the withdrawal Order, the brother-in-law of the appellant initiated proceedings for claiming damages from the appellant and also claimed possession of the matrimonial home where she has been residing since she got married in the year 1988. It is asserted that she had no source of income to sustain herself and if she is deprived of her matrimonial home, her life would be ruined. A prayer, is therefore made that the Order dated 11.12.2017 *vide* which the present Appeal was dismissed as withdrawn, may be recalled and the Appeal be restored.

9. **Submissions heard.**

10. The divorce was granted to the parties vide Judgment and Decree of Divorce dated 01.07.2010. The Appeal thereafter was filed by the appellant against the Decree of Divorce in January 2011. The matter was being pursued when on 29.10.2015, the respondent expired. Consequent thereto, their daughter Maneet Kaur was impleaded as a respondent. Thereafter, the Appeal was continued for about 2 years and was then, withdrawn on 11.12.2017.

11. The appellant has sought that the Order of withdrawal of the Appeal dated 11.12.2017 may be set aside. The first ground pleaded by her is that the parties arrived at a settlement dated 02.01.2015 in the proceedings under Section 125 CrPC and had started residing and co-habiting together.



However, the respondent expired on 29.10.2015. The appellant was under the impression that her marriage to the respondent had got restored and she was the legally wedded wife. It is pertinent to mention that if according to her, the matter had been settled in the proceedings under Section 125 CrPC, there was no impediment to withdrawal of the present Appeal in almost 9 months till 29.10.2015 during the lifetime of the respondent/husband. The parties may have co-habited but that is not sufficient to annul the decree of divorce which could have been done only by the Court. To claim that she was under the mistaken impression, cannot be accepted since she was assisted by an Advocate throughout the proceedings and the withdrawal of Appeal on 11.12.2017 had also been done in the presence of the counsel.

12. The other reason given by the learned counsel on behalf of the applicant/appellant is that the appellant is in a state of penury and has no source of income. In case her marital status is restored, she would become entitled to the family pension as the widow of the deceased/respondent. Though we fully understand and sympathise the dilemma of the appellant but once the Divorce has been granted way back in the year 2010 and she having withdrawn the Appeal in 2015, this cannot be considered as a cogent reason for seeking recall of the Order of withdrawal of the Appeal by moving this application after about 2 years. Clearly, it is an afterthought on account of subsequent events.

13. Significantly, the reasons for seeking recall of withdrawal of Appeal order is evident from her own submissions that she has been residing in the matrimonial home since the day of her marriage in the year 1988. After the Appeal was withdrawn, her brother-in-law Baljinder Singh (elder brother of



the respondent) had filed a Civil Suit against her for recovery of possession. Being faced with the impending eviction from the premises, now, the appellant seeks to recall of the Order of withdrawal of the Appeal. This situation may call for full sympathy, but it is evident from the record that she had no objection to the divorce and it is only subsequently when faced with difficult financial situation and threat of losing her house that she has sought setting aside of the Order of withdrawal of Appeal. In this context, it may be observed that she has a daughter who was impleaded as respondent on demise of the original respondent (her father).

14. We find that the appellant may be in her difficult situation but the subsequent events in no way give a reason for recalling of the Order of withdrawal of the Appeal dated 11.12.2017.

15. There is no merit in the application which is hereby dismissed.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 29, 2023
akb