

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.126 of 2019

Arising Out of PS. Case No.- Year-0 Thana- District- Siwan

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Gita Devi Wife of Nagendra Prasad, D/o Hari Narayan Sah Resident of Village - Bindusar Hamid, P.S.- Siwan Mufassil, District-Siwan, presently residing at Village-Bharauli, P.S.-Andar, District-Siwan

... .. Petitioner/s

Versus

Nagendra Sah Son of Dharam Nath Sah Resident of Village - Bindusar Hamid, P.S.- Siwan Mufassil, District-Siwan

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ashish Giri, Adv., Mr. Sumit Kumar Jha, Adv., Ms. Riya Giri, Adv.
For the Respondent/s	:	Mr. Chandra Sen Prasad Singh, APP

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

5 24-01-2024 In spite of service of notice the opposite party has not turned up.

2. The application under Section 5 of the Limitation Act, which is registered as I.A. No. 01 of 2019 is taken up for hearing.

3. The petitioner has prayed for condonation of delay by 29 days in filing the instant revision.

4. I have heard learned advocate for the petitioner. The petitioner has shown the cause, as to why the revisional application could not be filed within time, in paragraph-4 of the revisional application.

5. This Court finds that the petitioner has been able to prove that she was prevented by sufficient cause in filing the



instant revision.

6. Accordingly, the delay is condoned. The application under Section 5 of the Limitation Act is allowed.

7. The instant revision is taken on record.

8. The revisional application is taken up for hearing on the point of merit.

9. Only grievance in the instant revision is that Maintenance Case No. 254 of 2010, pending before the learned Principal Judge, Family Court at Siwan was dismissed for default on 2/3.05.2018 on the ground that when the matter was called on for hearing argument, the learned counsels on behalf of both the parties were not present.

10. On perusal of the materials on record specially Annexure-5 at page 47, it is asserted that the petitioner was present in the Court, when the matter was called on she went out side to call her learned Advocate. Subsequently, when she returned, she found that the case was dismissed for default. Immediately, she made an application for recalling of the order, but the learned Judge refused to recall the order on the ground that he did not have any power to recall the said order.

11. It is ascertained on perusal of the materials on record further that in the above mentioned Maintenance Case,



the parties led evidence. The case was fixed for argument. Even assuming that the learned Advocates were absent on the date when the argument was fixed, the learned trial Judge ought to have disposed of the application under Section 125 of the Cr.P.C. on merits, on the basis of evidence already adduced on record.

12. The impugned order is patently illegal. Accordingly, the impugned order dated 2/3.05.2018 is quashed and set aside. The instant revision is allowed.

13. The learned trial Judge is directed to fix a date of hearing argument within 15 days from the date of communication of this order and after giving information to the learned Advocates on behalf of the petitioner and opposite party, who used to represent the parties in the trial court, he is directed to hear the argument of both sides and dispose of the above mentioned Maintenance Case in accordance with law on the basis of the argument and evidence on record within one month from the date of communication of this order.

(Bibek Chaudhuri, J)

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