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2024

Ct. No. 04

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FA 322 of 2016
IA No. CAN 1 of 2016 (Old No. CAN 10274 of 2016)

Sri Shankar Narayan Roy
Vs.
Smt. Kasturi Roy

Mr. Gopal Chandra Ghosh,
... for the appellant.
Mr. Suprabhat Bhattacharya.
... for the respondent.

Re: CAN 1 of 2016 (Old No. CAN 10274 of 2016)

This is an application for condonation of delay of 654 days in preferring the instant appeal.

Undeniably, the husband/appellant filed an application under Section 13 of the Hindu Marriage Act, 1955 seeking dissolution of marriage on the ground of desertion and cruelty.

Admittedly, the parties were married on 5th June 2021 according to the Hindu rituals and rights and a suit came to be filed in the year 2005. Interestingly, an allegation was also made that the marriage was not consummated because of the impotency of the wife/respondent. The wife/respondent took a stand that she was subjected to cruelty in the hands of the husband/appellant as well as his family members and, in fact, she was compelled to leave the house and filed a complaint under Section 498A of the Indian Penal Code.

During the course of the proceeding, the pathological report relating to the competency of both the parties are filed and marked exhibits. The Trial Court did not find from the said pathological report that either wife/respondent or the husband/appellant are impotent and/or incapable to consummate the marriage. On the other hand, the wife/respondent categorically asserted that after solemnization of the marriage for nearly 3 and ½ years the parties happily consummated the marriage

and, even after she has left the matrimonial house at the instance of the husband, they both spent some time in the restaurant for having dinner/lunch and, therefore, she could not imagine that the instant suit shall be filed.

The Trial Court found that the husband/appellant has not been able to prove the cruelty nor could prove the desertion by the wife/respondent without any reasonable cause nor the parties are found to be impotent. The judgment was delivered on 17th September 2014 and, admittedly, the appeal came to be filed on 21st September 2016.

It is averred in the instant application that the learned Advocate, who was conducting the said matrimonial suit advised the husband/appellant not to prefer any appeal against the judgment and decree of dismissal immediately but should wait till the criminal proceeding under Section 498A of the Indian Penal Code is completed and the acquittal can be taken as a ground of cruelty in another proceeding.

It appears from the averments that all the records pertaining to the matrimonial case were not taken by the husband/appellant but remained with the said learned Advocate. A story is sought to be built up that on an occasion of Janmastami i.e. on 25th August 2016 an old acquaintance of the husband/appellant, who was at one point of time a practicing Advocate, met the husband/appellant at the temple and after hearing the facts advised to meet his acquaintance in the High Court. It is further averred that after collecting all the papers from the learned Advocate in the Trial Court, the husband/appellant met with the learned Advocate being an acquaintance of his old acquaintance and thereafter advised to immediately file an appeal. Such story is sought to be projected by the husband/appellant as substantial cause to exercise discretion by the Appellate Court to condone the delay.

Mr. Gopal Chandra Ghosh, learned Advocate appearing on behalf of the appellant, submits that the impugned judgment contains serious infirmities and/or illegalities and can be perceived to be perverse, as the documentary evidence was not considered in proper manner. He vociferously submits that the appellant cannot be said to be non-diligent or negligent having acted on the advice of the learned Advocate and, therefore, the time consumed on such advice should be treated as a sufficient cause for the purpose of condonation of delay.

On the other hand, the wife/respondent contends that there is a serious lapses on the part of the appellant in not promptly filing the appeal and in absence of any cogent explanation, the Court should not allow the application for condonation of delay by taking a lenient and/or casual approach.

On the conspectus of the aforesaid facts, we hastened to observe that at the time of consideration of condonation of delay in preferring an appeal beyond the statutory period of limitation, the Court should adopt a pragmatic approach. We are conscious that the length of delay is immaterial; what should weigh to the Court is the sufficiency of the cause shown in the said application.

The wrong advice and/or lapses on the part of the Advocate may in some cases be perceived as a sufficient cause but there may be strong evidence in this regard. The act of the appellant should be such that he was all along diligent in pursuing his remedy in litigation and no negligence and/or lapses can be attributable to his conduct.

The story set up on the instant application needs a deep scrutiny in pursuit of ascertaining the sufficiency in the cause, which is a hallmark in exercise of jurisdiction by the Court under Section 5 of the Limitation Act.

The appellant contends that he waited for two years on the advice of the learned Advocate and verified such statement as true to his knowledge. There is no supporting document from the hand of the said learned Advocate corroborating the aforesaid stand nor it can be believed that suddenly after a gap of two years he met with his old acquaintance, who happened to be the practicing Advocate of this Court and narrated the incident in the temple on the eve of Janmastami.

We do not find any explanation for a long period of two years and the story that he acted on the advice of the learned Advocate does not appear to be trustworthy nor believable. In the event it is found that there is a perversity in the judgment, as several documentary evidence had not been taken into account, it is inconceivable that an advice would be given not to prefer an appeal immediately after the delivery of the judgment, more particularly, from the Advocate, who conducted the matrimonial suit in the Trial Court.

We do not find such ground to be reasonable, far to speak of plausible for the purpose of bringing within the ambit of sufficient cause. Accordingly, the application for condonation of delay is hereby dismissed. As a consequence whereof, the appeal also stands dismissed.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)

