

AD-10
Ct No.16
12.12.2024
(SSS)

FAT 418 of 2023
With
CAN 1 of 2023
With
CAN 2 of 2023

Mrs. Nibedita Mukherjee
Vs.
Mr. Abani Bhusan Mukherjee

Mr. Partha Pratim Roy,
Mr. Sarbananda Sanyal,
Ms. Poulami Chakraborty, Advs.
.....For the Appellant.

Mr. Ayan Banerjee,
Mr. Joy Chakraborty,
Mr. Ranjit Malakar, Advs.
....For the Respondent.

CAN 2 of 2023

1. The present application is for condonation of delay of about 180 days in preferring the appeal. By the impugned ex parte judgment and decree, the respondent/husband obtained a divorce against the appellant/wife.
2. In the application for condonation of delay, the only ground taken by the appellant/wife for the delay is the illness of the wife during the relevant period, without disclosing any document in support of such proposition. Subsequently, after

an affidavit-in-opposition was filed by the respondent, where it was pointed out, inter alia, that the appellant/wife appeared in various proceedings even before the same court during the relevant period, an affidavit-in-reply has been filed by the appellant where a medical certificate has been disclosed.

3. Learned Counsel for the appellant submits that the appearances by the appellant were in other proceedings having no direct connection with the matrimonial suit. That apart, there is nothing on record to attribute knowledge of the ex parte decree during the relevant period to the appellant/petitioner. As such, it is submitted that the delay may be condoned.
4. Learned Counsel appearing for the respondent submits that post-expiry of the appeal period after the ex parte decree, the respondent/husband has contracted a second marriage. As such, it is submitted that the court ought to be slow in allowing condonation of delay in preferring the appeal. In support of such proposition, learned Counsel for the respondent places reliance on *Krishnaveni Rai vs. Pankaj Rai and Anr.* reported at (2020) 11 SCC 253.
5. Learned Counsel for the respondent further points out that in the main application for condonation

of delay, no explanation about lack of knowledge regarding the ex parte decree was furnished. The only ground pleaded was the alleged illness of the appellant which has not been substantially corroborated by the purported medical documents annexed to the affidavit-in-reply and the supplementary affidavit subsequently filed with the leave of court.

6. Upon a perusal of the materials on record, we find that it is an admitted position that the second marriage contracted by the respondent/husband was entered into after leaving the appeal period from the ex parte decree and as such, the second marriage is valid in the eye of law. In the event the appeal is taken on board at this juncture, it would ruin at least three lives, being those of the present parties and the second wife of the respondent, the latter being a collateral victim of circumstances without being responsible in any way.
7. Hence, in consonance with the proposition laid down in *Krishnaveni Rai (supra)*, we are of the opinion that we ought to be slow in allowing the condonation application.
8. In fact, we are not satisfied that the annexures to the pleadings of the petitioner, either in the application, the reply or the supplementary affidavit, are sufficient to prove any alleged illness

of such a degree so as to prevent the appellant from preferring an appeal in time.

9. Since the plea of lack of knowledge regarding the ex parte decree was apparently an afterthought, being not averred in the initial condonation application but disclosed in the reply only after the filing of the affidavit-in-opposition, we do not accept such explanation.
10. That apart, the impact of the appeal being registered and taken on board would be severely detrimental to the second spouse of the respondent, who is not a party to the litigation and not at fault either.
11. Since the question now boils down to the proposed claim of permanent alimony of the appellant, which the appellant/wife intends to make as expressed by her Counsel, we are of the opinion that the said issue can be canvassed before the Trial Court under Section 26 of the Hindu Marriage Act.
12. In view of the above discussions, CAN 2 of 2023 is dismissed on contest without, however, any order as to costs. Consequentially, FAT 418 of 2023 and CAN 1 of 2023 stand dismissed as well.
13. It is made clear that nothing in the above observations shall preclude the appellant/wife from taking out an appropriate application in

accordance with law for permanent alimony before the Trial Court. If so filed, the Trial Court shall decide the same in accordance with law upon giving an opportunity to both sides to file their pleadings and affidavit of assets and to adduce evidence, if required, without being prejudiced in any manner by the above dismissal.

(Sabyasachi Bhattacharyya, J.)

(Partha Sarathi Sen, J.)