

CM-2312-CII-2024
in/and
FAO-M-2-2024 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CM-2312-CII-2024
in/and
FAO-M-2-2024 (O&M)
Date of Decision: 19.03.2024

SUNITA DEVI

...Applicant/Appellant No.1

And

SUBHASH KUMAR

...Applicant/Appellant No.2

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Virender Kumar, Advocate
for the applicant/appellants.

HARSH BUNGER, J.

This is an application under Section 5 of the Limitation Act, filed by the applicants (Sunita Devi and Subhash Kumar), seeking condonation of delay of 2999 days in filing the accompanying appeal.

In the accompanying appeal, the applicants are seeking setting aside of judgment and decree dated 26.08.2013 passed by the learned District Judge, Karnal in **HMA Case No.59 of 2013**, whereby the petition under Section 13-B of the Hindu Marriage Act, 1955 filed by applicants herein, was allowed and a decree of divorce by way of mutual consent was passed and the marriage between the applicants was dissolved.

2. Briefly, the marriage between the applicants was solemnized on 24.06.1990 at Karnal, according to Hindu Rites and Ceremonies. Out of the said wedlock, the applicants have six children i.e. four daughters namely,

Ruchika, Anita Rani, Pratima, Meenakshi and two sons namely, Gaurav and Rohan.

3. Apparently, the applicants, on account of temperamental differences, started living separately since 24.08.2010 and since, there was no chance of re-conciliation between them and the sincere efforts made by the parents and relatives of both the parties failed to bring about re-union of the parties, ultimately, they decided to get divorce by mutual consent after settling all their matrimonial disputes like dowry and permanent alimony.

4. The applicants, after filing a petition under Section 13-B of the Hindu Marriage Act, 1955, appeared before the trial Court and made a joint statement on 23.02.2013, expressing their desire to get divorce by mutual consent. Thereafter, the efforts were made by the Court for re-union of the parties and to achieve that object, six months' time was afforded to them to rethink for re-settlement so that the marriage could be saved. It appears that after six months, the parties appeared before the concerned Court and disclosed that they could not make up their mind to live together as husband and wife and expressed their desire to get divorce by mutual consent. Accordingly, the applicants herein made a joint statement on oath that the marriage between them had come to an end and there were no chances of re-union and that they had settled all their matrimonial disputes.

5. Upon considering the stand of the parties (applicants herein) and also taking note of the fact that efforts by the Court for re-settlement had failed and there were no chances of their re-union, the Court of learned District Judge, Karnal, vide judgment and decree dated 26.08.2013, dissolved the marriage between the applicants herein by a decree of divorce under Section 13-B of the Hindu Marriage Act, 1955.

6. Now, after a period of more than ten years from the date of passing of the said decree of divorce, the applicants have filed the instant application under Section 5 of the Limitation Act, seeking condonation of delay of 2999 days in filing the accompanying appeal for setting aside the decree of divorce by way of mutual consent.

7. In the application seeking condonation of delay, the stand of the applicants is that due to differences of temperaments and understanding between them and under the influence/pressure of parents/relatives of both sides, they got a decree of divorce under Section 13-B of the Hindu Marriage Act, 1955 on 26.08.2013. It is stated that the applicants were not really interested to get divorce and in the month of January, 2021, they realized their mistake and with the efforts of their children, they started living together. It is further stated that in the month of October, 2023, both the parties realized that a decree of divorce under Section 13-B of the Hindu Marriage Act, 1955 dated 26.08.2013, is required to be set-aside so that there may not be any hindrance in their happy and prosperous future life. Accordingly, the applicants seek condonation of delay of 2999 days in filing the accompanying appeal wherein setting aside of the decree of divorce dated 26.08.2013 has been sought for.

8. We have heard learned counsel for the applicants and perused the paper-book with his able assistance.

9. It is well established that where a case has been presented in the Court beyond limitation, the applicant has to explain to the Court as to what was the "sufficient cause", which means an adequate and enough reason; which prevented him from approaching the Court within limitation. In case a party is found to be negligent, or for want of *bona fide* on his part in the

facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay.

The explanation has to be reasonable or plausible to enable the Court to exercise judicial discretion (See *AIR 2010 Supreme Court 3043 Balwant Singh (Dead) v. Jagdish Singh & Ors.*). Similarly, the Court has to record a satisfaction that the explanation for the delay was reasonable or satisfactory (See *AIR 1998 Supreme Court 2276 P.K. Ramachandran v. State of Kerala and another*).

10. In the instant case, the applicants are seeking setting aside of the decree of divorce by way of mutual consent, which came to be passed way back in the year 2013. The only explanation rendered by the applicants for filing the accompanying appeal after a delay of 2999 days, is that the divorce was obtained under the undue influence of their parents/relatives and that now they have realised their mistake and want to reside together for the welfare of their children.

11. We have considered the aforesaid explanation given by the applicants in the application seeking condonation of delay, however, in our considered view the said explanation cannot be accepted as a sufficient cause.

12. In the divorce petition filed by applicants under Section 13-B of Hindu Marriage Act, it was categorically stated by them that more than one year had passed since when the parties had been residing separately and they could not reconcile during that period of separation and had not resumed cohabitation. It was further stated by them that there was no possibility or probability of their living together as husband and wife and thus, they had mutually agreed that the marriage be dissolved.

13. In para no. 9 of the divorce petition, it was declared by the applicants that both the parties had not in any manner condoned the acts complained of, of each other and that both the parties had mutually agreed for dissolution of their marriage voluntarily without any force, fraud and coercion.

14. The applicants further maintained the aforesaid stand in their statement before the Court at the time of first motion as well at the time of second motion, wherein they also stated that they were making statement of their own free will without any pressure or coercion or threat from any side.

15. In case the explanation given by the applicants in their application seeking condonation of delay is to be accepted, then the same would render the stand taken by the applicants in their divorce petition as well as in their statements on first motion and second motion before the court below, as false. In our considered view, the parties cannot be permitted to come to the court with false stands nor the parties can be permitted to alter their stands or to make statements as per their whims and fancies.

16. When the contents of the divorce petition filed by the applicants under Section 13-B of Hindu Marriage Act and also their statements on first motion and second motion are juxtaposed with the contents of application seeking condonation of delay, the same are indicative of lack of bona fide of the applicants. Process of the Courts cannot be lightly and casually taken and no litigant should be allowed to believe that the liberal approaches of Courts can be misused.

17. The marriage between the applicants was dissolved by a decree of divorce by way of mutual consent under Section 13-B of Hindu Marriage Act and the same was passed more than 10 years ago. Their acquiescence in

prolonged separate living without demur, renders them consenting party to the same. In case the applicants have decided to reunite or stay together, then they can very well get remarried; however, the applicants cannot be allowed to abuse the process of law nor the delay of 2999 days in filing the accompanying appeal for setting aside the decree of divorce by way of mutual consent, can be condoned merely for the asking.

18. *Prima facie*, it appears that there is some oblique motive of the applicants in getting the decree of divorce under Section 13-B of the Hindu Marriage Act, set aside and that too, after a period of almost ten years.

19. For the aforesaid reasons, we find no force in the application seeking condonation of delay of 2999 days and the same is, hereby, dismissed.

20. As a sequel to the dismissal of the application seeking condonation of delay, we also dismiss the appeal, not only being hopelessly time barred, but also being bereft of any merit.

21. All pending applications (if any) shall also stand closed.

(SUDHIR SINGH)
JUDGE

(HARSH BUNGER)
JUDGE

March 19, 2024
gurpreet

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No