

D/L.11.
January 20, 2025.
MNS.

FAT No. 399 of 2023
+
CAN 1 of 2023

Subhojit Dutta
Vs.
Smt. Suparna Dutta

Mr. Shyamal Chakraborty,
Ms. Anjali Mishra

... for the appellant/petitioner.

Mr. Partha Pratim Mukhopadhyay,
Mr. Vivek Kumar Tripathi

...for the respondent/opposite party.

Re : CAN 1 of 2023 (Section 5 application)

1. Heard learned counsel for the parties, respectively in support of and against the application for condonation of delay in preferring the appeal.
2. The suit for divorce filed by the appellant-husband was dismissed on June 28, 2019, against which the present appeal has been preferred on October 19, 2023. The delay is of about 791 days.
3. Learned counsel appearing for the appellant-husband argues that the father of the appellant met his demise on September 12, 2019, just before the expiry of the limitation period for filing the appeal.
4. The appellant has pleaded in the application under Section 5 of the Limitation Act as well as the supplementary affidavit filed in connection therewith that the appellant was suffering from mental depression and as such was not in a position to prefer the appeal in time.

Thereafter the Covid-19 Pandemic commenced and the appellant was also out of his job. The appellant got another job in the year 2023.

5. It is further submitted on behalf of the appellant that in the interregnum, talks of settlement were going on between the parties. Learned counsel for the appellant alleges that the respondent did not return to the appellant of her own despite the appellant's divorce suit having been dismissed, for which a communication was made by the appellant-husband to the respondent-wife.

6. In reply thereto, the respondent-wife allegedly gave an answer in writing on July 28, 2023, which is annexed at page 9 of the application for condonation of delay.

7. It is thus submitted that the marriage has broken down irretrievably and that there is considerable merit in the appeal, for which the delay occasioned in preferring the appeal ought to be condoned.

8. Learned counsel appearing for the respondent-wife seriously opposes such prayer and points out that the prolonged delay in filing the appeal has not been explained at all.

9. Apart from the day-to-day explanation not being given, the relevant dates have also not mentioned in the application or the in the supplementary affidavit.

10. Upon hearing learned counsel, we are of the view that the appellant has failed to give sufficient explanation for the delay in preferring the appeal.

11. The impugned judgment and decree were passed on June 28, 2019. The limitation period expired after ninety days thereof.

12. Even after the expiry of such limitation period in or about the month of September, 2019, the appellant had about six months' time before the onset of the Covid-19 Pandemic, due to which the lockdown started roundabout the beginning of April, 2020. The pandemic restrictions ended in the year 2022. It is an admitted position, as it transpires during hearing, that the lockdown restrictions ended in or about February-March, 2022.

13. We find that the appeal was filed more than one year and seven months even thereafter.

14. There is nothing on record to show that the appellant-husband was suffering from such serious clinical depression for the prolonged period of six months after his father's demise that he was not in a position to prefer an appeal. Moreover, no date has been given in the application as to when the appellant lost his job. Although day-to-day delay is not required to be explained, at least the relevant periods and the dates, which are germane in the context of the condonation application, are required to be pleaded, which are seriously absent in the present case.

15. Hence, not only was the husband delayed in preferring the appeal for about six months after expiry of limitation before the commencement of the Pandemic lockdown, even thereafter he wasted more than one year

and seven months for preferring the appeal, without any rhyme and reason. The argument that despite the appellant's efforts, no reconciliation took place, is neither here nor there and could not be a valid ground for preferring the appeal late.

16. Rather, the purported letter of the respondent-wife, annexed to the appellant's application for condonation of delay, brings out the wife's intention to resume conjugal life with the appellant in consonance with the dismissal of the husband's suit for divorce.

17. Thus, we do not find any cogent reason for the long delay of 791 days in preferring the appeal. As such, there is no scope of the court entering into the merits of the appeal; in fact, nothing palpably illegal in the impugned judgment and decree has been pointed out by learned counsel for the appellant which would prompt the court to pause a little before dismissing the condonation application.

18. In view of the above, CAN 1 of 2023 is dismissed on contest, consequentially dismissing FAT No. 399 of 2023 as time-barred.

19. There will be no order as to costs.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)