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

**CM-22930-CII-2024 IN/AND
FAO-M-34-2024 (O&M)
Date of decision: January 29, 2025**

Divya Jyoti Mahajan @ Divay Jyoti Mahajan

....Appellant

versus

Rajesh Marwaha

....Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present:- Mr. Karan Bhardwaj, Advocate for appellant.

SUDHIR SINGH, J. (ORAL)

Challenge in the present appeal is to the impugned judgment/decreed dated 14.10.2013 passed by learned District Judge, Pathankot (for short 'the trial Court'), whereby petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') filed by the appellant/wife was dismissed.

2. Along with the present appeal, an application i.e., CM-22930-CII-2024 has been filed seeking condonation of delay of huge 4065 days in filing the present appeal. The grounds, *inter alia*, taken in the said application in respect of condoning aforesaid delay are that the appellant/wife is a working mother raising her child all alone and due to her extremely

demanding job as a Teacher, she could not file an appeal against the impugned judgment/decreed, and rather, she was advised by her counsel to file a petition under Section 10 of the Act, which she did on 24.01.2019. The said petition was dismissed by the learned Family Court, Pathankot, vide judgment/order dated 17.01.2022. Thereafter, she challenged the said judgment/order by way of FAO-1028-2022, which was too dismissed on 11.07.2024 with a view that the petition under Section 13 of the Act had already been decided. It is also stated that the respondent/husband had not appeared in the proceedings under Section 10 of the Act before the Family Court as well as before this Court. The appellant/wife had raised her child all alone and could not devote her time and money to contest litigation with the respondent/husband, as she is a working woman and has six days working schedule, and living alone at Pathankot, which is about 260 kms away from Chandigarh.

3. The aforesaid explanation given in the application for condonation of delay does not inspire any confidence. Perusal of the application would reveal that not only the application has been filed in a mechanical manner, but even the mandate of law, which envisages each day's delay has to be explained, is completely lacking.

4. Flimsy grounds have been taken to explain the delay. The appellant is a working woman and takes care of her son and living far away from Chandigarh. She had filed a petition under Section 10 of the Act and the respondent did not appear in the same. All these grounds are of no help to the appellant as she was not required to appear in person for challenging the

impugned judgment/decreed which was passed way back on 14.10.2013 and could have engaged a counsel to litigate on her behalf. Further filing of petition under Section 10 of the Act is also not a ground to condone huge delay, even when the same was dismissed by the learned Family Court as well as before this Court. The appearance and/or non-appearance of the respondent in the said petition before the Family Court or before this Court has nothing to do with the condonation of delay, when the appellant is required to plausibly explain the aforesaid delay of huge 4065 days in filing the appeal.

5. Even, for the sake of argument, if the delay after filing of petition under Section 10 of the Act i.e., from 24.01.2019 (date of filing of petition under Section 10 of the Act before the Family Court) to 11.07.2024 (the ultimate decision by this Court with regard to said petition) is to be ignored, still there is almost 5 years' delay [(from 14.10.2013 (the date of decision on the petition under Section 13 of the Act) to 24.01.2019)], for which no sufficient or plausible explanation is coming forth.

6. There is no dispute regarding the discretion of the Court to condone the delay if sufficient cause is shown by the appellant for the same. However, in the instant case we find that the delay of 4065 days could not be explained by the appellant by giving cogent and convincing reasons. The reasons as noted above, do not inspire confidence. The judgments rendered by the Hon'ble Supreme Court in **Civil Appeal Nos.6599-6601-2014** titled as **Dhiraj Singh (D) Tr. Lrs. etc. etc. versus Haryana State and Ors. etc. etc.**, decided on 21.07.2014, **Market Committee, Hodal versus Krishan Murari and others**, reported as **1996 SCC (1) 311**, judgment rendered by **Punjab**

and Haryana High Court in RFA-4237-2016 titled Harphool (deceased) through LR's and others versus State of Haryana and others, decided on 17.11.2016, judgment rendered by Andhra Pradesh High Court in C.M.A.M.P. No.1610 of 2005 and CMA No.755 of 2005 titled Katta Naga Malleshwari versus Katta Vasantha Rao, decided on 22.08.2005, and judgment rendered by Bombay High Court in CAM/76/2012 in Family Court Appeal (Stamp) No.7883 of 2012 titled Mrs. Regi Suresh Nair versus Shri Suresh Putharakkal Nair, decided on 20.04.2012 referred by the learned counsel for the appellant/wife are of no help to the appellant as in the said judgments, the delay was condoned after the reasons therefor were sufficiently explained.

7. In view of the above, we find that the appeal filed by the appellant/wife is hopelessly time barred. Thus, while dismissing the application for condonation of delay, the main appeal is also dismissed being time barred.

8. Pending application/s, if any, shall also stand disposed of.

(SUDHIR SINGH)
JUDGE

(SUKHVINDER KAUR)
JUDGE

January 29, 2025
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No