

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.343 of 2023

Reena Rai Wife of Divyendra Kumar, D/o- Arbind Kumar Suman, A resident of Kirapur Rajaram, P.S. Bhagwanpur, District- Vaishali, at present residing at RZ3284/37 Tugalkabad extension, New Delhi- 110019, Near SShahi Public School, Gali No.37.

... .. Appellant/s

Versus

Divyendra Kumar Son of Dwendra Rai, A resident of Mohalla- Nakhas Mithakuan, P.S.-Hajipur Town, District- Vaishali.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Harish Kumar, Advocate
For the Respondent/s : Mr.Vasant Vikas, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and

HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE DR. ANSHUMAN)

9 19-02-2026 Learned counsel for the appellant and learned counsel for the respondent along with their clients are present.

2. After detailed discussion between the parties, they cannot reached on one time settlement.

3. It transpires to this Court that the memo of appeal has been filed for setting aside the *Ex-parte* order dated 25.05.2022 as well as decree dated 07.06.2022 in Matrimonial Divorce Case No.135 of 2020 passed by Principal Judge, Family Court, Vaishali at Hajipur. An I.A. No.01 of 2023 has also been filed for condonation of delay in filing the appeal.

4. It further transpires to this Court that the ground taken by the appellant is that notice has never been served. Upon specific query of the Court that whether remedy under Order 9 Rule XIII of the Code of Civil Procedure has been



exhausted or not?

5. In reply, counsel for the appellant submits that the said remedy has not been exhausted by the appellant till date.

6. We are of the considered opinion that prior to preferring miscellaneous appeal, the appellant should have to avail remedy under Order IX Rule 13 of the Code of Civil Procedure. Therefore, this matter is remanded back and the *Ex-parte* order dated 25.05.2022 as well as decree dated 07.06.2022 in Matrimonial Divorce Case No.135 of 2020 passed by Principal Judge, Family Court, Vaishali at Hajipur are set aside.

7. Accordingly, the present miscellaneous appeal is hereby disposed of, granting liberty to the appellant to file a miscellaneous appeal before the Trial Court itself and exhaust the said remedy in accordance with law.

8. We are conscious that any such application under Order IX Rule 13 of the C.P.C. is barred by limitation. As the limitation period is only 30 days, but at the time of passing order, we are hereby directing to the Trial Court to entertain such application and limitation, if any, is hereby directed to be condoned.

(Bibek Chaudhuri, J)

(Dr. Anshuman, J)

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