

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Appeal No.510 of 2019**

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Sarita Kumari alias Jyoti Kumari

... .. Appellant/s

Versus

Govind Kumar

... .. Respondent/s

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**Appearance :**

|                      |   |                                   |
|----------------------|---|-----------------------------------|
| For the Appellant/s  | : | Mr. Madan Prasad Singh No.2, Adv. |
| For the Respondent/s | : | Mr. Birendra Kumar, Adv.          |
|                      |   | Mr. Kumud Kishore, Adv.           |

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**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI**  
**and**  
**HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA**  
**ORAL ORDER**

**(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)**

16    07-04-2026

**I.A. No. 03 of 2025**

Heard the parties.

2. Notice has been served upon the respondent.

3. Though Mr. Birendra Kumar learned advocate alongwith Mr. Kumud Kishore entered appearance on behalf of the respondent, no step has been taken by them to represent the respondent when the matter was called up for hearing.

4. It appears from the record, that the instant appeal was inadvertently admitted with the order dated 01.07.2025 by learned Co-ordinate Bench overlooking



the fact that the appeal is barred by limitation and an application for condonation of delay bearing I.A. No. 03 of 2025 is lying with the record.

5. Therefore, we propose to take up the application filed by the appellant for condonation of delay.

6. It is submitted on behalf of the appellant that the judgment and decree of Divorce cum Matrimonial Case (Divorce Case No. 207 of 2017) was disposed of by learned Principle Judge, Family Court, Nawada on 14.02.2019 *ex-parte*.

7. The existence of *ex-parte* decree came to the knowledge of the appellant only on 29.05.2019 when she appeared before the learned Additional Sessions Judge 3<sup>rd</sup>, Barh, to contest the anticipatory bail petition filed by the opposite party. Subsequently, he obtained the certified copy of the impugned judgment and filed the appeal on 18.07.2019, thus there was delay of 5 months and 4 days in filing the appeal because the appellant did not have any knowledge about the above



numbered matrimonial case.

8. This Court has heard the learned advocate on behalf of the appellant. It is not in dispute that the decree for dissolution of marriage by divorce was passed *ex-parte* against the appellant. The appellant had the recourse to set aside the said decree by filling an application under Order 9 Rule 13 of the CPC in the learned trial court itself, especially when it is contended by her that she didn't receive any summons of the divorce case for the reasons noted above while we allow the instant application for condonation of delay and admit the appeal afresh, we are of the view that remedy of the appellant lies in the learned trial court by filing an application under Order 9 Rule 13 of the CPC alongwith an application under Section 5 of the Limitation Act.

9. For non-service of summons the learned appellate court is not in a position to consider, as to whether the summons of the case was actually served upon the appellant or not. It is learned trial court to decide the said fact on materials on record.



10. Considering such circumstances we are of the view that the instant appeal is not maintainable, however, the appellant is at liberty to file an application under Order 9 Rule 13 of the CPC alongwith an application under Section 5 read with Section 14 of the Limitation Act and if such application is filed the learned trial court shall consider liberally the application for condonation of delay.

11. Appellant is directed to take appropriate steps within six weeks from the date of this order.

**(Bibek Chaudhuri, J)**

**( Chandra Shekhar Jha, J)**

Sudha/S.Tripathi

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