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Amar Chandra Deb Vs. Anjali Deb

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Court : Guwahati

Decided On : Jan-16-2007

Judge : A.H. Saikia and Mutum B.K. Singh, JJ.

Appellant : Amar Chandra Deb

Respondent : Anjali Deb

Advocate for Pet/Ap. : Mr. N. Majumder

Disposition : Application dismissed

Judgement :

A.H. Saikia, J.

1. Heard Mr. N. Majumder, learned Counsel for the petitioner-husband and Ms. S. Deb (Gupta), learned Counsel for the respondent-wife.

2. By means of this application filed under Section 5 of the Limitation Act, 1963, the petitioner has sought for condonation of inordinate delay of 389 days in preferring the related first appeal against the judgment and order dated 12.05.2005 passed by the learned Judge, Family Court, West Tripura, Agartala in Misc. FC/61/2005 being filed by the wife-respondent seeking maintenance under Section 125 of Cr.P.C. wherein the learned Judge granted maintenance allowance to the respondent-wife @ Rs. 1,500/- per month.

3. Explaining the delay in question, the petitioner has tried to set out the sufficient cause in paragraph Nos. 3 to 6 of the application, which may be noticed as under:

3. That the Appellant-Petitioner is a man residing in rural area of Tripura having no knowledge and therefore, it was not known to him that within a certain period the appeal was to be filed.

4. That the Appellant-Petitioner is never wanting in due diligence and he was pursuing his case consistently and there had been no latches or dereliction of duty on his part in respect of conducting his case and the reason of delay in filing the appeal was neither directly nor indirectly attributable to the Appellant-Petitioner. The delay was caused for reasons not within the control of the Appellant-Petitioner and the period of delay is insignificant.

5. That the exparte judgment passed by the Ld. Judge, Family Court on 12.05.2005 on the basis of prayer made by the Respondents. The maintenance prayer made by the Respondents were rejected by the Ld. Judicial Magistrate, First Class on the sole ground that the Respondent wife deserted her husband appellant as such are not entitle the maintenance allowance from the husband. The Judge, Family Court without taking into such consideration passed the judgment on 12.5.2005 allowing maintenance to the Respondents, which is followed by a Mis.Ex.216/2005 by which the appellant petitioner came to know that such exparte order passed. The appellant filed a written objection on 16.08.2005 in the aforesaid proceedings and also preferred an application on 15.12.2005 Under Section 125(3) Cr.P.C. 1973 proviso with the hope that his prayer be allowed; wherein specifically stating that the Appellant husband offers to maintain his wife on condition of her living with him and the appellant is ready and willing to take back of his wife and ready to lead the conjugal life and was also ready to get back of his beloved daughter who is missing the love and affection of the father. Such prayer of the Appellant in regard to matrimonial matter is being rejected by the Judge, Family Court, Agartala followed by a order dated 13.1.2006.

6. That finding no other relief from the Ld. Judge, Family Court, the appellant prayed for the certified copy of the judgment on 7.2.2006 and the copy of the certified copy received to Let a notice of motion issue calling upon the respondents

to show cause as to why a rule shall not be issued as prayed for; and/or as to why such further order or other orders shall not be (sic) passed as to this Court may seem fit and proper. 3.3.2006.

As stated earlier the Appellant reside in a remote village of Kamlpur Sub-Division, Dhalai District of Tripura could not visit Agartala frequently, your humble appellant serving as Constable under Tripura Police Organization and were frequently shifted one place to another for official duty. That also prevented the appellant to prefer the appeal in time.

3.1 On meticulous inspection of the averments made herein above, we are of the view that the delay of 389 days in filing the related first appeal has not been sufficiently and adequately explained. Essential prerequisite for condonation of delay is either reasonable or satisfactory explanation for such delay. The above averments can hardly be said to be reasonable, satisfactory or even the acceptable explanation for seeking condonation of such inordinate delay. Accordingly, such explanations put forward in the above paragraphs cannot be accepted as 'sufficient cause'.

4. That being the position, we are disinclined to accept the condonation application. Accordingly, the condonation application is rejected.

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