

Rameshchandra Vs. Rookumaribai

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Court : Madhya Pradesh

Decided On : Sep-19-2002

Reported in : II(2003)DMC195

Judge : A.K. Gohil, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 28; [Limitation Act, 1963](#) - Sections 5

Appeal No. : First Appeal No. 778 of 2000

Appellant : Rameshchandra

Respondent : Rookumaribai

Advocate for Def. : S.K. Ojha, Adv.

Advocate for Pet/Ap. : J.B. Dave, Adv.

Disposition : Appeal dismissed

Judgement :

A.K. Gohil, J.

1. The appellant has filed this appeal Under Section 28 of the Hindu Marriage Act against the judgment and decree dated 10.8.2000 by which the Trial Court has dismissed the appellant's petition for divorce on the ground that the same is barred on the principle of res judicata. This appeal is barred by 24 days. The appellant

has also filed an application for condonation of delay Under Section 5 of the Limitation Act.

2. Heard on M(o)P No. 1050/2000 an application for condonation of the delay. The appellant has filed this appeal on 3.10.2000. In the application for condonation of the delay, the submission of the appellant is that he applied for certified copy on 12.9.2000, after the period of expiry of limitation. The copy was supplied on 30.9.2000. In the application the appellant has mentioned that the Counsel for the appellant Mr. K.C. Nahar informed him that the period of limitation for filing appeal is 60 days. Therefore, he could not file the appeal in time. The learned Counsel for the respondent has opposed the application vehemently. It has been submitted that Mr. K.C. Nahar is an Advocate of long standing and regularly practising in the Bar, since last 20 years. Therefore, it is unbelievable, that he will give wrong information that the period of limitation for filing appeal is 60 days. It has been further objected that the appellant has not filed any affidavit of Mr. K.C. Nahar, Advocate nor of Mr. Mohammad Ishaq Khan, Advocate in whose presence the matter was discussed. Therefore, in the absence of affidavit of the learned Counsel, the submission made by the appellant cannot be believed, application cannot be allowed and delay cannot be condoned.

3. I have also perused the application. In the application the appellant has not stated any reason that when the decree was passed on 10.8.2000 then why he has filed an application for obtaining the certified copy of the judgment and decree on 12.9.2000, after the expiry of period of limitation.

4. When the appellant has applied for certified copy after the expiry of period of limitation then, the appellant has to satisfy the Court that why he could not file the application within time but in the application nothing has been mentioned about it. It is also true that when the copy was received on 30.9.2000 then why the appeal was not filed immediately and the appellant has not offered any explanation for not filing the appeal from 30.9.2000 to 31.10.2000. The appellant has also not filed affidavit of Mr. K.C. Nahar, Advocate nor the affidavit of Mr. Mohammad Ishaq Khan, Advocate, in whose presence time of 60 days was intimated to the appellant.

5. From the record, it appears that the appellant is a local resident of Indore, It has also been mentioned in the application that when it was intimated to the appellant that the period of limitation is 60 days whether after obtaining certified copy or after the judgment and decree, if this submission is believed, even then he has not applied for certified copy within 30 days. Therefore, from the aforesaid facts on record, the appellant could not furnish any sufficient explanation and could not satisfy this Court about condonation of the delay.

6. Therefore, in the absence of such pleadings in the application and also in the absence of affidavit of the learned Counsel for the appellant and looking to the fact that this application is being opposed seriously by the other side, the application for condonation of the delay cannot be allowed, even, in the absence of any sufficient and reasonable explanation. The application is liable to be dismissed. Accordingly, this application for condonation of the delay is dismissed as no ground for condonation of the delay is made out. Consequently, the appeal is also dismissed as barred by limitation.