

HIGH COURT OF GAUHATI**Bench: Justice Parthivjyoti Saikia****Date of Decision: 12th June 2024**

Case No.:

I.A.(Civil)/3357/2022

APPELLANT(S): RASHMI INDOULIYA @ CHAUDHARYAppellant**VERSUS****RESPONDENT(S): VED PRAKASH INDOULIYARespondent****Legislation:**

Sections 5, 28 of the Hindu Marriage Act, 1955

Section 15 of the Hindu Marriage Act, 1955

Section 5 of the Limitation Act, 1963

Subject: Application under Section 5 of the Limitation Act for condonation of 122 days delay in preferring matrimonial appeal under Section 28 of the Hindu Marriage Act, 1955.

Headnotes:

Condonation of Delay – Matrimonial Appeal – Application under Section 5 of the Limitation Act for condonation of 122 days delay in filing appeal against ex parte decree of dissolution of marriage – COVID-19 and family responsibilities cited as reasons for delay – Respondent remarried after expiry of appeal period – Delay not satisfactorily explained – Application dismissed [Paras 1-14].

Section 15 of the Hindu Marriage Act – Remarriage of Divorced Person – Bar under Section 15 applies only if appeal filed within limitation period – Respondent remarried after expiration of appeal period – Court holds bar not applicable – Appeal not filed within 90 days; remarriage on 26.05.2022 considered lawful [Paras 7-12].

Case References – Legal Precedents Cited – Cites Supreme Court decisions in Tejinder Kaur v. Gurmit Singh (1988) 2 SCC 90 and Krishnaveni Rai v. Pankaj Rai (2020) 11 SCC 253 – Highlights precedent on procedural obligations and conditions for remarriage post-divorce decree [Paras 8-9].

Decision – Interlocutory Application Dismissed – Delay in filing appeal not condoned – Court finds delay not satisfactorily explained and bar under Section 15 of Hindu Marriage Act not applicable [Paras 13-14].

Referred Cases:

- Tejinder Kaur v. Gurmit Singh, (1988) 2 SCC 90
- Krishnaveni Rai v. Pankaj Rai, (2020) 11 SCC 253

Representing Advocates:

For the Applicant: Mr. P.K. Das, Advocate.

For the Respondent: Mr. S. Mitra, Advocate.

JUDGMENT AND ORDER (CAV)

Heard Mr. P.K. Das, the learned counsel appearing for the applicant as well as Mr. S. Mitra, the learned counsel representing the opposite party.

2. This is an application under Section 5 of the Limitation Act praying for condonation of 122 days of delay in preferring the matrimonial appeal under Section 28 of the Hindu Marriage Act, 1955.
3. The factual matrix leading to filing of this application is like this— Shri Ved Prakash Indouliya filed an application under Section 13 of the Hindu Marriage Act seeking a decree of dissolution of his marriage with his wife Rashmi Indouliya. The case was filed in the court of the District Judge, Kokrajhar. Notice was issued to Rashmi Indouliya. She received the notice, but did not contest the case. Therefore, the court passed the decree on 17.07.2021 against her *ex parte*.
4. She did not file an appeal against the said decree within the time frame stipulated by law. After 122 days of delay, she filed the appeal along with the present application. Rashmi Indouliya has stated that during the COVID-19 period, her husband had sent her to Mathura in the State of U.P. and therefore, she could not come to Kokrajhar to contest the case before the trial court.
5. Regarding the delay of 122 days, Rashmi Indouliya has stated that she has to look after her 8 year old son and her old parents. Therefore, the delay occurred.
6. The respondent submitted that when the applicant did not file the appeal within the stipulated time, he remarried.
7. At this stage Section 15 of the Hindu Marriage Act is applicable, which reads as under:

“15. Divorced persons when may marry again.—When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again.”

8. Mr. Das has relied upon a judgment of the Supreme Court that was rendered in *Tejinder Kaur v. Gurmit Singh*, (1988) 2 SCC 90. The Supreme Court held as under:

“9. In view of this, it was incumbent on the respondent to have enquired about the fate of the appeal. At any rate, the High Court having dismissed the appeal on July 16, 1986 the petitioner could have presented a special leave petition within ninety days therefrom under Article 133(c) of the Limitation Act, 1963 i.e. till September 14, 1986. Till that period was over, it was not lawful for either party to marry again as provided by Section 15. It was incumbent on the respondent, as observed in *Lila Gupta case* [(1978) 3 SCC 258 : AIR 1978 SC 1351 : (1978) 3 SCR 922] to have apprised himself as to whether the appeal in the High Court was still pending; and if not, whether the period for filing a special leave petition to this Court had expired. We must accordingly overrule the preliminary objection following the views expressed in *Chandra Mohini* [AIR 1967 SC 581 : (1967) 1 SCR 864] and *Lila Gupta* [(1978) 3 SCC 258 : AIR 1978 SC 1351 : (1978) 3 SCR 922] cases. We wish to add that in the subsequent decision in *Lila Gupta* [(1978) 3 SCC 258 : AIR 1978 SC 1351 : (1978) 3 SCR 922] the court while dealing with the effect of deletion of the proviso observed: (SCC p. 269, para 12)

“The net result is that now since the amendment parties whose marriage is dissolved by a decree of divorce can contract marriage soon thereafter provided of course the period of appeal has expired.”

The court adverted to the word of caution administered by Wanchoo, J. in *Chandra Mohini case* [AIR 1967 SC 581 : (1967) 1 SCR 864] and reiterated: (SCC p. 269, para 12)

“. . . even though it may not have been unlawful for the husband to have married immediately after the High Court's decree for no appeal as of right lies from the decree of the High Court to this Court, still it was for the respondent to make sure whether an application for special leave had been filed in this Court and he could not, by marrying immediately after the High Court's decree, deprive the wife of the chance of presenting a special leave petition to this Court. If a person does so, he takes a risk and could not ask the Court to revoke the special leave on that ground.”

9. *Per contra*, Mr. Mitra has relied upon a decision of the Supreme Court that was delivered in *Krishnaveni Rai v. Pankaj Rai*, (2020) 11 SCC 253. The judgment reads as under:

“32. The bar, if any, under Section 15 of the Hindu Marriage Act applies only if there is an appeal filed within the period of limitation, and not afterwards upon condonation of delay in filing an appeal unless of course, the decree of divorce is stayed or there is an interim order of court, restraining the parties or any of them from remarrying during the pendency of the appeal.”

10. I have considered the submissions made by the learned counsel of both sides.
11. The *ex parte* decree was passed on 17.07.2021. Within 90 days thereafter, no appeal was filed. Hence, on 26.05.2022, the respondent husband, remarried.
12. I am of the considered opinion that the bar of Section 15 of the Hindu Marriage Act would not be applicable in the present case.
13. Moreover, I find that the delay has not been satisfactorily explained in this case.
14. For these two reasons, I hereby hold that the delay cannot be condoned.

The Interlocutory Application stands dismissed accordingly.

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Comparing Assistant