

Misc. Case No.1 of 2018
(Arising out of Mat. Suit No. 38 of 2016)
(Arising under Order 9 Rule 9 C.P.C.)

Order No. 60 dated 07.01.2020 :-

Today is fixed for Judgment and Order in respect of the Misc. Case No. 1 of 2018 as well as the Petition under Section 5 of Limitation Act.

Heard the submission from both sides in respect of the petition under Order 9 Rule 9 C.P. Code read with Section 5 of Limitation Act.

Written Objection filed by the O.P. / Husband.

On minute scrutiny of the record it is revealed that the Misc. Case No. 2 / 2016 under Section 24 of Hindu Marriage Act, 1955 which was filed on 24.11.2016 was dismissed for default vide Order No. 21 dated 17.07.2017. After passing the above Order the Petitioner / Wife submitted an application for restoration of the Misc. Case under Order 9 Rule 9 read with Section 151 C.P.C. which was registered as Misc. Case No. 1 of 2018 dated 04.05.2018 as transpired from the record. Evidence was taken and after completion of hearing and at the time of argument the Petitioner / Wife filed a petition u/s 5 of Limitation Act praying for condonation of delay.

The Ld. Advocate for the Petitioner / wife led her argument on the ground that the mistake was entirely bonafied mistake and it was the fault of the Lawyer that she could not properly search the case record. Petitioner is a poor and helpless lady and she was not able to proceed with the said Misc. Case and she approached before Legal Services Authority. One Advocate Gopa Maity was appointed on behalf of D.L.S.A. but she also could not attend Court due to her personal inconvenience. As a result, Misc. Case No. 2 of 2016 was dismissed for default on 17.07.2017. Later on another Ld. Advocate Smt. Anandamoyee Nag from D.L.S.A. appeared and Ld. Court was pleased to fix for reconciliation of the Mat. Suit after vacating the Ex-parte state. The Ld. Advocate for the Petitioner submitted that the Petitioner is the victim of circumstances and she had no latches on her part but she has suffered due to the non appearance of the Ld. Advocates.

The Ld. Advocate for the O.P. / Husband submitted that the petitioner was not at all diligent in conducting the said Misc. Case No. 2 of 2016 and willfully negligent in conducting the Misc. Case.

With regard to the Provisions of Section 5 of Limitation Act which deals with condonation of delay is the extension of the prescribed period in certain cases and Section 5 Limitation Act is

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:: 2 ::

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preferred in Appeal and Application and does not include Suit as it is an exception to Bar of Limitation which is defined under the Act. For taking the benefit of the Doctrine of Limitation the Applicant must have 'sufficient cause' in order to condone the delay. It is the discretion of the Court even after the 'sufficient cause' given by the Applicant, instances in which condone is delayed has been given under the Project.

In the instant case, the Petitioner / Wife has shown the ground that she was prevented to take any steps which was extremely due to the latches on the part of her Ld. Advocate and that Ld. Lady Advocate was also not in a position to appear and move on behalf of the Petitioner due to her personal inconvenience of child birth.

In my considered opinion, there is no willful negligency on the part of the Petitioner being a poor, helpless lady, and the cause shown is sufficient and it was beyond the control of the party invoking the aid of Section 5 Limitation Act. However, from the several decisions of the Hon'ble Apex Court it can be construed that the expression 'sufficient cause' should receive a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bonafide is imputable to the appellant or applicant.

Hence the delay is condoned for the ends of substantial justice.

Having considered the entire facts and circumstances and the evidence on record and from the observations of the Hoble Court I am opined to allow the instant Misc. Case No. 1 of 2018.

Hence it is

O R D E R E D

That the Misc. Case No. 1 of 2018 arising out of Mat. Suit No. 38 of 2016 is hereby **allowed on contest. Thus the Misc. Case No. 1 of 2018 is hereby disposed of.**

The original Misc. Case No. 2 of 2016 is restored to its original file.

To 18.02.2020 for evidence of O.P.W. 1 in Misc. Case No. 2 of 2016.

Dictated & Corrected by me.

Additional District Judge,
Amta, Howrah.

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Amta, Howrah.