

Misc case no. 01 / 2017

CIS no. 01 / 2017

26.04.2018

Today is the date fixed for order.

Record is taken up for the same.

Perused the application under section 5 of Limitation Act filed by the petitioner as well as the written objection thereto filed by the OP.

It is the contention of the petition that on 11-12-16 when she had come before the Islampur Court in connection with her case no. 66 / 16 filed by her against her husband with the allegation punishable u / s 498-A IPC, She came to know about the Matrimonial case no. 31 / 12 filed by her husband against her on 24-8-12 and the said case has been decreed ex parte on 07-5-13. It is the contention of the petitioner that she had no knowledge about the filing of said Mat suit no. 31 / 12 by her husband prior to the that date. She had filed the divorce application before the Court of Jalpaiguri being case no. 175 / 16. She had never received any notice from the court in connection with Mat suit no. 31/12. She further came to know that her husband had filed the said Mat suit by mentioning her wrong address which was her temporary address and she also came to know that her husband by misleading the court obtained the order under order 5 rule 20 of CPC and then obtained ex parte decree. As she never received any notice of the said Mat

suit and accordingly she had no knowledge about the institution of the said case prior to 11-12-16, she had no willful latches in this case. There is delay of 1308 days in lodging of the present application which was beyond the control of the petitioner and accordingly she prays for condonation of such delay.

OP by filing his written objection denied about the said contention of the petitioner and also denied about having no knowledge on the part of the petitioner regarding the Mat suit filed by him and accordingly he prays for dismissal of the prayer of the petitioner for condonation of delay.

To substantiate the contention the petitioner herself examined as PW-1 by filing her affidavit in chief. On the other hand, OP himself examined as DW by filing his affidavit in chief.

It is the contention of the petitioner according to her application under order 9 rule 13 CPC that her actual address is Adarpara, Ward no.11, Jalpaiguri. At the time of cross examination DW -1 has admitted about the said address of the petitioner and also said that the said address of the petitioner has been recorded in their marriage registration certificate and he has said that he had mentioning the address of the petitioner as C/O Naresh Chandra Roy, Village-Old Police Line near LIC Office, Jalpaiguri.

From the evidence of DW-1 it appears that he has filed the main Mat suit without mentioning actual permanent address of the present petitioner. Considering such evidence on record it can be safely hold that no notice of the Mat suit has been served upon the present petitioner as the OP has filed the main Mat suit without mentioning the proper permanent address of the petitioner. Considering such fact, I find there are justifiable reasons for making delay in filing of the present Misc. case and I think the prayer of the petitioner is liable to be allowed.

Hence, it is

o r d e r e d

that the application under section 5 of Limitation Act is considered and allowed but without any costs. Delay is accordingly stand condoned.

Fix 05-6-18 for hearing of the main misc case application under order 9 rule 13 of CPC.

Dict & corrt

by

Addl Dist. Judge

Addl District Judge

Islampur.