

Gujarat High Court

Anilkumar vs Shri on 30 March, 2010

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Gujarat High Court Case Information System

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CRA/32/2008 3/ 3 ORDER

IN
THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL
REVISION APPLICATION No. 32 of
2008

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ANILKUMAR
KANAIYALAL JAISWAL - Applicant(s)

Versus

HEENABEN
RAMESHCHANDRA JAISWAL - Opponent(s)

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Appearance :
MR
JV JAPPEE for Applicant(s) : 1,
MR BS PATEL for Opponent(s) :
1,
MRS RANJAN B PATEL for Opponent(s) :
1,

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CORAM

:

HONOURABLE

MR.JUSTICE M.R. SHAH

Date
: 30/03/2010

ORAL
ORDER

By way of this revision application under Section 115 of Code of Civil Procedure, petitioner has prayed to quash and set aside the impugned order passed by learned Additional Sessions Judge, 4th Fast Track Court, Modasa, dated 20th December, 2007 passed in CMA No.34 of 2007 by which, the learned appellate Court dismissed the said application submitted by the petitioner which was submitted to condone the delay of 9 years and 8 months in preferring the appeal challenging the judgment and decree passed by learned Civil Judge (S.D.), Himatnagar passed in HMP No.51 of 1994 dismissing the said HMP preferred by the petitioner-husband for getting the divorce under Section 13 of Hindu Marriage Act.

Shri Japee, learned advocate appearing on behalf of the petitioner has submitted that after the dismissal of HMP No.51 of 1994 in the year 1998, respondent-wife filed a suit for restitution of conjugal rights and there was a decree passed by learned trial Court against the petitioner and in favour of respondent-wife in the year 1998 and therefore, petitioner was of the opinion that in view of the decree passed in favour of the wife for restitution of conjugal rights, she will stay with the petitioner and therefore, petitioner did not challenge the judgment and decree passed by the learned trial Court passed in HMP No.51 of 1994 dismissing the suit preferred by the petitioner for getting the divorce under Section 13 of Hindu Marriage Act. Therefore, it is submitted that in the aforesaid facts and circumstances of the case, learned appellate Court ought to have condoned the delay in preferring the appeal.

Shri Chirag Patel, learned advocate appearing on behalf of respondent-wife has submitted that the impugned order passed by the learned appellate Court in not condoning the delay of 9 years and 8 months in preferring the appeal is just and proper. It is submitted that on the ground stated in the application to condone the delay, the learned appellate Court has rightly rejected the application and not condoning the delay of 9 years and 8 months by further observing that except the say of the husband that he is ready and willing to reside with the wife, Nothing is on record that any attempts were made by the husband to reside and stay with the wife. Therefore, it is requested to dismiss the present revision application.

Having heard the learned advocates appearing for the respective parties and considering the impugned order passed by the learned appellate Court in not condoning the delay of 9 years and 8 months in preferring the appeal, it cannot be said that learned appellate Court has committed any error and/or illegality in not condoning the huge delay of 9 years and 8 months in preferring the appeal. Grounds stated by the petitioner in the application to condone the delay of 9 years and 8

months have been considered by the learned appellate Court on valid reasons. As rightly observed by the learned appellate Court except the bare words and say of the husband that he is ready to stay and reside with the wife. Nothing is on record that any attempts were made by the petitioner-husband to stay / reside with the wife. Therefore, grounds stated by the applicant in the application for condonation of delay has not been accepted by the learned appellate Court.

In view of the above and considering the reasons stated in the impugned order, no case is made out to interfere with the impugned order passed by the learned appellate Court in not condoning the delay of 9 years and 8 months. Under the circumstances, present revision application deserves to be dismissed and is accordingly dismissed. The amount of Rs.5,000/- (Rupees Five Thousand Only) deposited by the petitioner is permitted to be withdrawn by the respondent-wife. Registry is directed to pay the said amount to the respondent-wife by account payee cheque.

(M.R.SHAH, J.) (ashish) Top