

### Conclusion

Marriage for Hindus is a union of bond to bone and flesh to flesh where women takes a new birth in her husband's home where her husband and is her God and her life becomes one of selfless service and profound dedication to her husband sharing life and love, joys and sorrows, troubles and tribulation of her husband. Status of a wife as half body of her husband, equally sharing fruit of pure and impure sets and referring

to Mahabharata which states where females are honoured, deities are pleased; but where they are unhonoured there all religious acts become fruitless. High position bestowed on Hindu, women by Shastric law illustrated how after marriage law enjoins corresponding duty on husband to look after comforts of a wife and not only to provide her food and clothes but to protect her from all calamities and to take care of her health and safety. When the matter comes to Court the Court shall make every effort to sustain the marriage.

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### ANALYSIS

***Order 9(13) of CPC Rule 55 of Civil Rules of Practice read with Section 5 of Limitation Act - Whether Single application for condonation of delay and also to set aside ex parte decree is maintainable?***

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The article is confined to whether single application is enough for condonation of delay and also to set-aside the *ex parte* decree, as it appears two separate petitions are being filed one to condone the delay and the other to set aside the *ex parte* decree, despite the bedrock of Law of the age old Division Bench Decision reported in 1988 (1) ALT 783

A short but important question law of general importance which arises for consideration whether single application for condonation of delay and for setting aside expert decree or order is enough out of apparent conflict in views

What test, guidelines and principles that should be apply for determination of the smoot question self for consideration in a

certain of out of which 1988 (1) ALT 783 (DB) is the landmark decision to the effect single application is enough and the golden thread of ruled that passing through this decision, is subsequently followed in several other certain of decisions such as 2005 (1) ALD 672 = 2005 (1) ALT 805 and other decisions. Latest being, 2017 (3) ALD 583.

Despite the authority 2 petitions are filed may be due to inadvertence

Before Considering the legal aspect of the matter, it may be useful as a sort of prefatory caveat, Rule 55 of Civil Rules of Practice and Circular Order, provides the separate applications must be filed for each distinct relief prayed or but goes on to state that the same would not be necessary if the reliefs sought are consequential.

In order to get a hang over the matter, Rule 55 of Civil Rules of Practices is delineated as hereunder.

“Separate application for each distinct prayer :—There shall be separate application in respect of each distinct relief prayed for when several reliefs are combined in one application the Court may direct the applicant to confine the application only to one of the such reliefs unless the reliefs are consequential and to file a separate application in respect of each of the others”

The law on the subject is not uniform as there are conflicting decision contrary to the Division Bench Decision. But the entire controversy as to whether two applications one of condonation of delay and the other to set at rest the *ex parte* decree is set-aside rest by the authoritative pronouncement of a Division Bench Decision on this aspect of day-to-day occurrence covered by *M.A Quader v. Md. Azad Ali*, 1988 (1) ALT 783 wherein it was held categorically that where the grounds for seeking both such reliefs are the same, it would not be necessary that a separate application to be filed for condonation of delay. It was also pointed out Section 5 of the Limitation Act 1963 does not stipulate filing of separate application thereunder.

A part from this decision, in *Kavali Narayana and others v. Kaval Chinnamma*, 2005 (1) ALD 672 = 2005 (1) ALT 805, it was held referring to 1988 (1) ALT 783 (D.B) and the other decision 2002 (6) ALD 473 = 2002 (5) ALT 783.

“From the above it is clear that when the reasons shown in the affidavits in support of the application filed under Order 9(13) and under Section 5 of the Limitation Act, are one and the same no separate application is required to be filed under Section 5 of Limitation Act, and it is a matter of satisfaction of the Court to exercise its discretion basing on the facts.

It was further lucidly held it is true that Rule 55 of the Civil Rules of Practice, mandates that separate application for each distinct prayer shall have to be filed. If several reliefs are claimed in the same application the Court may direct the applicant to restrict it to one such relief. An exception to this mandate is where one relief claimed in that application is consequential to the other relief. From a reading of Rule 55 of Civil Rules of Practice, it is evident that filling of individual applications for separate reliefs is not a universal principle. Much would depend on the nature of reliefs. In the matter of filling application either under Order 9 or 13, of Order 9 CPC, condonation of delay, whenever such applications are filed beyond the stipulated period of limitation is inter connected with the main relief, namely set-aside the order dismissing the suit for default or to set-aside the *ex parte* decree.

The two reliefs are so inter connected with each other that one cannot exist in the absence of another. Therefore petition under Section 5 of the Limitation Act squarely fall in to the category of Consequential reliefs”, which are exempted from the requirement of Rule 55 of Civil Rules of Practice.’

This bed rock of law is followed in the latest decision 2017 (3) ALD 583.

### Conclusion

This being the legal position adverting to the catena of decisions on this critical issue of day-to-day importance where the law on the subject is no longer *res integra* it is suggested this Article is unique and would be great help and use to the members of the Bar and Bench that single application for condonation of delay and setting aside *ex parte* decree is enough and it is suggested the centripode issue involved emanates for consideration at all levels.