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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Date of Decision: 15.03.2024*

+ **MAT.APP.(F.C.) 72/2023 & CM Appl.12255/2023**

JAMPA GYAL TESN

..... Appellant

Through: Mr Sumante De with Mr Rohit  
Khurana, Adv.

versus

YESHI LHAMO

..... Respondent

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**HON'BLE MR. JUSTICE AMIT BANSAL**

[Physical Hearing/Hybrid Hearing (as per request)]

**CM Appl.12255/2023** [*Application filed by the appellant seeking  
condonation of delay of 91 days in filing the appeal.*]

1. This is an application seeking condonation of delay in filing the appeal.

1.1 According to the appellant, there is a delay of 91 days.

2. Having regard to the period of delay involved and the fact that the respondent, despite service, has not entered appearance, we are inclined to condone the delay.

2.1 It is ordered accordingly.

3. The application is disposed of.

**MAT.APP.(F.C.) 72/2023**

4. This appeal is directed against the judgment and decree dated



03.11.2022 passed by the learned Principal Judge, Family Courts, Tis hazari, Delhi.

5. *Via* the impugned judgment, the learned Principal Judge has dismissed the petition instituted by the appellant under Section 13(1) (ib) of the Hindu Marriage Act, 1955 [hereafter referred to as the “1955 Act”].

6. Notice in this appeal was issued on 16.03.2023.

7. The record shows that since the respondent had shifted from the address indicated in the memo of parties appended to the appeal, and the appellant was unaware of the respondent’s new address, liberty was sought by the appellant’s counsel to serve the respondent through substituted mode.

7.1 Accordingly, steps were taken and leave was granted by the Joint Registrar (Judicial) *via* order dated 25.09.2023 to serve the respondent through publication. The publication with regard to the pendency of the instant proceedings was taken out in two newspapers i.e., ‘Rashtriya Sahara’ (Hindi) and, ‘The Statesman’ (English).

8. The order of learned Joint Registrar (Judicial) dated 21.11.2023 discloses that service *via* publication stood completed.

9. The record shows that the matter was thereafter placed before the coordinate bench on 29.11.2023. The coordinate bench, on that date, recorded that despite service, there was no representation on behalf of the respondent.

9.1 However, no adverse orders were passed *qua* the respondent and the matter was directed to be listed before the court today i.e., 15.03.2024.

10. A perusal of the record discloses that the respondent failed to enter appearance even before the Family Court, which resulted in an order being issued, that is, to serve the respondent *via* publication.



11. The impugned order records that that publication with regard to the proceedings concerning divorce petition before the Family Court were taken out in an English newspaper i.e., 'The Tribune', dated 20.04.2019. Since there was no appearance on behalf of the respondent, she was proceeded *ex parte* on 06.02.2020.

12. It is against this backdrop that the appellant filed his affidavit of evidence, which was accompanied by the following Ex.PW1/1 to Ex. PW-1/3:

1. Photocopies of marriage photographs, which is exhibited as Ex. PW-1/1 (OS&R).
2. Photocopy of marriage registration certificate of the parties, which is exhibited as Ex. PW-1/2 (OS&R).
3. Copy of ID proof of petitioner which is exhibited as Ex. PW-1/3 (OS&R)."

13. The learned Principal Judge, however, was not persuaded to hold that the parties had entered into matrimony. In this regard, the observations made by the Court in paragraphs 12 and 13 of the impugned judgment need to be extracted as the rationale for rejecting the petition emerges from the observations made therein:

*"12. After considering the evidence alleged by the petitioner and the arguments advanced by Ld. Counsel for petitioner and considering the material on record, I am of the opinion that petitioner has not been able to prove that his marriage was solemnized with respondent on 03.09.2012 at H. No 76, Tibetan Old Camp, Majnu Ka Tila, Delhi-54. In order to prove the marriage, petitioner has relied upon the marriage photographs which is exhibited as Ex. PW-1/1 collectively. From perusal of these photographs, which are three in numbers, it is clear that these photographs only depict the petitioner and respondent with some of their friends, in none of the photographs any marriage ceremonies is being performed. Therefore it cannot be considered that these photographs are photos of marriage ceremonies of petitioner and by these photographs it is not proved by petitioner that his marriage was solemnized with respondent.*



13. Secondly, the petitioner has placed on record marriage registration certificate which is exhibited as Ex. PW1/ 2. In this registration certificate also it has not been mentioned where the marriage was solemnized and that what ceremonies for the marriage has been solemnized. In the marriage certificate, place of marriage is mentioned as New Delhi. This cannot be considered to be the place where actually marriage would have taken place between the parties as the case of petitioner is that his marriage with respondent was solemnized at Majnu Ka tila, Tibetan Old Camp, but the address of this place is not mentioned in the Ex. PW-1/2 , no witness has been examined by the petitioner apart from him who can prove that the marriage between the parties was solemnized at Delhi or it was solemnized as per Hindu rites and ceremonies. In the entire petition it has also not been mentioned by the petitioner how he came to know the respondent and how the marriage was solemnized between the parties. Admittedly petitioner is the resident of Belgium and he is residing in Belgium since 2005. It is mentioned in para 6 of the petition that petitioner came to India in 2012 at Majnu Ka Tila, New Delhi where friends of petitioner were residing. None of the friends of petitioner have been examined by petitioner to prove that his marriage was solemnized at Majnu Ka Tila on 03.09.12 or that it was solemnized with the respondent, who as per the case of the petitioner was residing at Kangra, Himachal Pradesh before the marriage and at the time of filing of petition. Therefore, I am of the opinion that there are so many discrepancies in the case as mentioned by petitioner which does not inspire confidence for the allegation levelled by the petitioner against the respondent. Since, I am of the opinion that petitioner has not been able to prove that his marriage was solemnized with respondent on 03.09.2012 at Majnu ka Tila as same is not proved by any witness, doctor, registration certificate. Therefore, I am of the opinion that petitioner has also failed to prove that respondent had deserted him after few days of marriage and hence petition for dissolution of marriage on the ground of desertion as filed by petitioner is liable to be dismissed as not proved. No order as to cost.”

14. We have examined the findings returned by the learned Principal Judge.

15. In our opinion, since the respondent chose not to contest the petition, ordinarily, the assertions made in the petition and the evidence placed on record, which went un rebutted, should have been accepted.

16. The learned Principal Judge has made observations with regard to the



marriage registration certificate [Ex. PW-1/2] that was placed on record by the appellant.

17. In our view, if the Court had doubts with regard to the genuineness of the marriage registration certificate placed on record, it was within its powers to summon the original record.

18. The assertions made in the divorce petition that the petitioner was a resident of Belgium since 2005 and that he had visited India in 2012 for solemnization of his marriage with the respondent, unless contested, should have been accepted.

19. In our view, as indicated above, there was no good reason for the learned Principal Judge to reject the registration certificate dated 05.09.2012. Likewise, the assertions made by the appellant that shortly after solemnization of marriage, the respondent went back to her parental home, and the appellant also returned to Belgium where he was gainfully employed, should have been accepted unless there was contestation.

20. The appellant's assertion that since the time he returned to Belgium, which was immediately after the marriage, there has been no contact between the couple and that the respondent has refused to engage in conjugal relationship with him, ought to have been accepted.

21. On the face of it, the appellant's assertion that he returned to India in 2015 and 2017 to rebuild a relationship with the respondent could not have been doubted. For the reasons best known, the respondent has chosen not to contest the petition.

22. Therefore, broadly, the ingredients of Section 13 (1) (ib) of the 1955 Act were embedded in the divorce action, which should have led to the dissolution of marriage as sought by the appellant.



23. Thus, for the foregoing reasons, we are inclined to reverse the impugned judgment and decree.

24. It is ordered accordingly.

25. The marriage between the respondent and the appellant shall stand dissolved.

26. A decree will be drawn up in line with what is stated hereinabove.

**RAJIV SHAKDHER, J**

**AMIT BANSAL, J**

**MARCH 15, 2024**

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