

(2009) 12 AHC CK 0175
In the Allahabad High Court

State of U.P.& Others

APPELLANT

Vs

Phool Chandra Yadav

RESPONDENT

Date of Decision : 23-12-2009

Acts Referred:

Citation : (2009) 12 AHC CK 0175

Hon'ble Judges : Chandramauli Kumar Prasad, CJ and Pankaj Mithal, J

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.

Order on the Delay Condonation Application No. Nil of 2009

1. This application has been filed for condoning the delay in filing the appeal.
2. According to the Stamp Reporter, appeal is barred by limitation by 2 years and 86 days.
3. Various reasons, which prevented the applicants from filing the special appeal within time have been enumerated in the affidavit filed in support of the delay condonation application.
4. We are of the opinion that the same constitute sufficient cause for condoning the delay in filing the appeal.
5. Accordingly, the delay in filing the appeal is condoned.
6. Application stands allowed.
7. Order on Special Appeal Defective No.1350 of 2009
8. Respondent appellants, aggrieved by an order dated 16th of August, 2007 passed by learned Single Judge in Civil Misc. Writ Petition No.42034 of 1998, have preferred this appeal under Rule 5 Chapter VIII of the Allahabad High Court Rules, 1952.

9. Short facts giving rise to the present appeal are that the writ petitioner respondent was appointed as a Constable in the year 1994 in the U.P. Provincial Armed Constabulary by order dated 11.12.1997. He was removed from service on the ground that he had married again though his first wife is still alive.

10. Appeal as also revision preferred against the aforesaid order were dismissed by orders dated 08.05.1998 and 24.08.1998.

11. Writ petitioner respondent, challenged the aforesaid orders in the writ application and the learned Single Judge by impugned order had allowed the writ application and quashed the aforesaid orders, inter alia, on the ground that the family Court by its judgment and decree dated 04.04.2001 passed in suit No.511 of 1997, had declared that the first wife did not continue as wife after 14.05.1989.

12. Mr. Pipersenia, learned counsel appearing on behalf of the respondent appellants submits that plea of the writ petitioner respondent that he had divorced his wife according to their custom on 14.05.1989, ought not to have been accepted.

13. We do not find any substance in the submission of Mr. Pipersenia.

14. The learned Single Judge had not accepted the custom of divorce, but taking into account the judgment and decree passed by a competent Civil Court held that the relationship of the writ petitioner respondent with his first wife came to an end on 14.05.1989.

15. Nothing has been brought on record to show that aforesaid judgment and decree of the family Court has been set aside by any superior Court.

16. We are of the opinion that consideration of the matter by learned Single Judge does not suffer from any error, calling for interference in this appeal.

17. There is yet another impediment in the way of the respondent appellants.

18. In view of the Division Bench judgment of this Court in the case of Shyam Bihari Vs. State of U.P. Through Pramukh Grih Sachiv U.P., Lucknow and others, reported in [2005 (60) ALR 257], the appeal does not also seem to be maintainable.

19. We do not find any merit in the appeal, and it is dismissed accordingly.