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HIGH COURT OF CHHATTISGARH AT BILASPUR

**Division Bench:- Hon'ble Shri Justice T.P.Sharma &
Hon'ble Shri Justice R.N.Chandrakar, JJ**

Review Petition (Civil) No. 92 of 2009

Applicant : Smt. Suman Mishra, aged about 35 years, wife of Arjun Prasad Mishra C/o Gyandatt Mishra, Pratapganjpara, Jagdalpur, now resident of Bodhghat Colony, Jagdalpur, Distt. Bastar (C.G.)

Versus

Non-Applicant : Arjun Prasad Mishra, S/o Ramji Mishra, aged about 36 years, Ramaiya Ward, Motitalbpara, Jagdalpur, Distt. Bastar (C.G.)

Application under Section 114 of the Code of Civil Procedure, 1908.

Present:- Shri R.N.Jha, counsel for the applicant.
Shri Prafull N. Bharat, counsel for the respondent.

Oral Order

(Passed on 30th August, 2011)

Heard.

1. By this review petition, petitioner has prayed for review of order dated 19.01.2009 passed by Single Bench in F.A.No.489/2000 whereby appeal filed on behalf of appellant has been dismissed.
2. The review petition has been filed after 04 days of its limitation.
3. Heard on I.A.No.1/2009 for condonation of delay in filing the review petition.
4. On due consideration, I.A.No.1/2009 is allowed. Delay in filing the review petition is hereby condoned.
2. Learned counsel for the petitioner submits that originally petitioner has filed the appeal under Section 28 of the Hindu Marriage Act for setting aside the decree of divorce and enhancement of permanent alimony from Rs.1000/- to Rs.5,000/- during pendency



of appeal but after filing of appeal, petitioner has also filed I.A.No.1294/2006 for enhancement of permanent alimony on 10.04.2006. He also submits that counsel for the petitioner has argued before Hon'ble Single Bench for enhancement of permanent alimony awarded by the decree and also argued on I.A.No. 1294/2006 but the judgment does not reflect such enhancement order on I.A.No.1294/2006 or for enhancement of permanent alimony. On the aforesaid ground, the order requires to be modified.

3. On the other hand, learned counsel for the respondent opposed the petition and submit that submission of learned counsel for the petitioner has been mentioned in para 8 of the judgment in detail wherein it does not find any submission relating to enhancement of the permanent alimony or argument on I.A.No.1294/2006. Consequently, there is no ground for review of order passed by learned Single Bench.

4. Para 8 of judgment dated 19.01.2009 read as follows:

"Shri R.N. Jha, learned counsel for the appellant argued that the trial Court erred in drawing a presumption of cruelty on the ground that the criminal prosecution lodged against the respondent/husband and his family members under Section 498-A of the IPC had resulted in acquittal. Learned counsel for the appellant urged that the respondent/husband and his family members were acquitted of the charge under Section 498-A of IPC after giving them the benefit of doubt. This would show that a semblance of truth existed in the report lodged by the appellant and the acquittal resulted due to inability of the prosecution to prove the guilt beyond the shadow of reasonable doubt. It was further submitted that oral evidence was led by the appellant to show that no efforts were made by the respondent/husband to take the appellant/wife from her maternal home to the matrimonial house. It was also urged that the respondent/husband had got the application for divorce by mutual consent signed by the appellant per force and therefore, the appellant/wife had declined before the Court to separate from her husband. It was also urged that the dissolution of marriage by the trial Court was upon a misreading of the evidence led by the parties.



5. Para 8 of the judgment reveals that counsel for the petitioner has specifically argued for setting aside the decree of divorce and in para 8 of the judgment it does not reflect any submission relating to enhancement of permanent alimony. In these circumstances, we are unable to cite submission of counsel for the petitioner that ground taken for enhancement of permanent alimony has been argued in I.A.No.1294/2006 and not considered.
6. Consequently, we do not find any ground for review. The review petition is liable to be dismissed, and is hereby dismissed.
7. No order asto costs.

Sd/-
T.P. Sharma
Judge

Sd/-
Rangnath Chandrakar
Judge

Vijay