

31.03.2026

Called out. Present Sh. Prahalad Singh Rathore learned counsel for the applicants, Sh. Shivkumar Shukla learned D.G.C. (Criminal) for state and Sh. Atul Shukla learned counsel for opposite party no. 02. Opposite party no. 02 also filed photocopy of marriage agreement between husband of opposite party no. 02 and one Rajiya @ Rajni Kumari which has been witnessed by the applicant no. 01.

Heard on application 3Kha wherein the applicant have stated that they had been remaining for a long time and despite treatment the applicant no. 02 became blind and the appellant sustained huge financial setbacks, which resulted in delay in preferring the appeal against impugned ex parte judgment dated 05.08.2022. A photocopy of disability certificate of applicant no. 02 Smt. Shanto showing her complete blind, paper no. 09Kha has been filed.

Learned counsel for opposite party no. 02 submitted that Balvir Singh applicant no. 01 has been appearing in other cases and there was deliberate absence by him in this case. The applicants should not be allowed to take benefit of their own wrong by not appearing before the learned Magistrate.

A perusal of record reveals that husband of opposite party no. 02 filed his vakalatnama before the Magistrate on 02.03.2017 and thereafter stopped appearing. However, a perusal of record reveals that specific service was not made on the applicants. At the same time, husband of opposite party no. 02 and applicants are residents of same village and applicant no. 01 has been appearing in other cases. Thus, it can be presumed that he was having knowledge of the present case as well.

However, considering the illness of opposite party no. 02 and absence of specific service on the applicants, the delay in preferring the appeal can be condoned subject to payment of exemplary cost.

ORDER

Accordingly, application 3Kha is allowed subject to payment of cost of Rs. 10,000/-. Cost be paid till the date fixed. Put up for hearing on admission on 25.04.2026.

**Sessions Judge,
Etawah.**