

Court No. - 10

Case :- FIRST APPEAL DEFECTIVE No. - 164 of 2024

Appellant :- Pradeep Kumar

Respondent :- Sonal

Counsel for Appellant :- Kunwar Ravi Prakash, Sarvesh Kumar

Hon'ble Vivek Chaudhary, J.

Hon'ble Om Prakash Shukla, J.

(Order on I.A. No. 1 of 2024-Delay condonation application)

This is an application for condonation of delay in filing the present first appeal. The application is supported with an affidavit. There is no objection on behalf of opposite parties.

The ground taken in the affidavit is sufficient.

Accordingly, the application is **allowed**.

The delay in filing the first appeal is condoned.

Order on first appeal:-

Heard learned counsel for the appellant.

The appellant has filed the present Appeal for seeking to set aside the order dated 06.09.2024, whereby the Principal Judge, Family Court, Sultanpur, in Misc. Civil Case No. 332/2023 (Sonal Versus Pradeep Kumar) allowed an application under Order IX Rule 13 of the Code of Civil Procedure (CPC) and recalled the ex-parte decree of divorce dated 18.12.2021. The order was recalled upon the payment of costs amounting to ₹1,000/-.

Learned counsel for the appellant contends that the Principal Judge, Family

Court, erred in allowing the application of the respondent under Order IX Rule 13 CPC. It is argued that summons were served upon the respondent, and the trial court was justified in presuming sufficient service of summons. Further, the respondent-wife was aware of the divorce proceedings but deliberately avoided appearing before the Family Court.

The question which arose for consideration before the learned Principal Judge, Family Court, was whether the respondent was able to make out a case of "sufficient cause" for non-appearance, as required in terms of Order IX Rule 13 CPC.

The scope of an application under Order IX Rule 13 CPC requires the Court to determine whether the summons in the suit were duly served and whether the respondent was prevented by any "sufficient cause" from appearing when the suit was called for hearing. The term "sufficient cause" is flexible and does not lend itself to rigid definitions or fixed guidelines. Although the Court has wide discretion in interpreting "sufficient cause," this discretion must be exercised judiciously, keeping in mind the specific facts and circumstances of each case.

Having heard the submissions of the learned counsel for the appellant-husband and perused the records, it is evident that the Principal Judge, Family Court, while adjudicating the application under Order IX Rule 13 CPC, examined the pleadings and evidence presented. The respondent-wife asserted in her application that the address mentioned in the summons by the appellant was incorrect. Specifically, the address referred to "Rehta Chauraha" instead of "Vehta Chauraha," resulting in the respondent not receiving the summons. There is no report that the summons were served, rather, as the envelop did not return back, service was deemed to be sufficient.

Upon analyzing the material on record, the Principal Judge rightly concluded

that the notice service in the proceedings under Section 13 of the Hindu Marriage Act was insufficient. The court noted that while issuing the ex-parte divorce decree, the presumption of sufficient service was made without ensuring compliance with additional service requirements prescribed under the Rule 15 of The Uttar Pradesh Family Courts (Court) Rules, 2006 which quotes as under:

“Rule 15 - In case after normal service against a woman defendant no one appears and the proceeding are about to be taken exparte, the Court may consider an additional service once again.”

Supreme Court in case of **Parimal v. Veena alias Bharti** reported as **(2011) 3 SCC 545**, where the expression "sufficient cause" was interpreted as under:

"13."Sufficient cause" is an expression which has been used in a large number of statutes. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, word "sufficient" embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party had not acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. (Vide Ramlal v. Rewa Coalfields Ltd., Lonand Grampanchayat v. Ramgiri Gosavi, Surinder Singh Sibia v. Vijay Kumar Sood and Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corpn.)

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15. While deciding whether there is sufficient cause or not, the court must

bear in mind the object of doing substantial justice to all the parties concerned and that the technicalities of the law should not prevent the court from doing substantial justice and doing away the illegality perpetuated on the basis of the judgment impugned before it. (Vide *State of Bihar v. Kameshwar Prasad Singh*, *Madanlal v. Shyamlal*, *Davinder Pal Sehgal v. Partap Steel Rolling Mills (P) Ltd.*, *Ram Nath Sao v. Gobardhan Sao*, *Kaushalya Devi v. Prem Chand*, *Srei International Finance Ltd. v. Fairgrowth Financial Services Ltd.* and *Reena Sadh v. Anjana Enterprises.*)

16. In order to determine the application under Order 9 Rule 13 CPC, the test that has to be applied is whether the defendant honestly and sincerely intended to remain present when the suit was called on for hearing and did his best to do so. Sufficient cause is thus the cause for which the defendant could not be blamed for his absence. Therefore, the applicant must approach the court with a reasonable defense. Sufficient cause is a question of fact and the court has to exercise its discretion in the varied and special circumstances in the case at hand. There cannot be a straitjacket formula of universal application."

It would be apposite to also advert to **A. Murugesan v. Jamuna Rani** reported as **(2019) 20 SCC 803**. In the said case, the Supreme Court affirmed its earlier view taken in **G.P. Srivastava v. R.K. Raizada** reported as **(2000) 3 SCC 54**, which is reproduced hereunder:

"7. Under Order 9 Rule 13 CPC an ex parte decree passed against a defendant can be set aside upon satisfaction of the Court that either the summons were not duly served upon the defendant or he was prevented by any "sufficient cause" from appearing when the suit was called on for hearing. Unless "sufficient cause" is shown for non-appearance of the defendant in the case on the date of hearing, the court has no power to set aside an ex parte decree. The words "was prevented by any sufficient cause from appearing" must be liberally construed to enable the court to do complete justice between the parties particularly when no negligence or inaction is imputable to the erring party. Sufficient cause for the purpose of Order 9 Rule 13 has to be construed as an elastic expression for which no

hard and fast guidelines can be prescribed. The courts have a wide discretion in deciding the sufficient cause keeping in view the peculiar facts and circumstances of each case. The "sufficient cause" for non-appearance refers to the date on which the absence was made a ground for proceeding ex parte and cannot be stretched to rely upon other circumstances anterior in time. If "sufficient cause" is made out for non-appearance of the defendant on the date fixed for hearing when ex parte proceedings were initiated against him, he cannot be penalised for his previous negligence which had been overlooked and thereby condoned earlier. In a case where the defendant approaches the court immediately and within the statutory time specified, the discretion is normally exercised in his favour, provided the absence was not mala fide or intentional. For the absence of a party in the case the other side can be compensated by adequate costs and the lis decided on merits."

Given these circumstances, the recall order dated 06.09.2024, of the Principal Judge, Family Court, Sultanpur, in Misc. Civil Case No. 332/2023 (Sonal Versus Pradeep Kumar) under order 9 rule 13 of CPC recalling the ex-parte decree is found to be in accordance with law and warrants no interference in this appeal.

In the view thereof, there is no force in the present appeal and the same is ***dismissed.***

Order Date :- 18.12.2024

Arti/-

[Om Prakash Shukla,J.] [Vivek Chaudhary,J.]