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CGHC010403322025



2026:CGHC:38498-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

FA(MAT) No. 339 of 2025

1. Shriti Kumari Alias Khusboo W/o Rishibhan Soni, D/o Late Ramnarayan Prasad Soni, Aged About 27 Years R/o Village Samauli (Lakhanpur) Bhaiyathan, Police Station And Tehsil Bhaiyathan, District Surajpur (C.G.) Present R/o Purani Munsfi Mohalla Nala Par Aurangabad, Police Station Nagar Aurangabad, District Aurangabad, Bihar

... Appellant/defendant

versus

1. Rishibhan Soni S/o. Mr. Kamal Kishore Soni, Age About 31 Years, R/o Village Samauli (Lakhanpur), Gaiyathan, Police Station And Tehsil Bhaiyathan, District Surajpur (C.G.)

... Non-appellant/Plaintiff

For Appellant : Mr. Sajal Kumar Gupta, Advocate

For Non-appellant : Mr. Anil Kumar Pandey, Advocate with Mr. Abhishek Banjare, Advocate

DB: Hon'ble Mr. Justice Parth Prateem Sahu, J
& Hon'ble Mr. Justice Sachin Singh Rajput, J

Order on Board

Per Parth Prateem Sahu, J

31.8.2026

1. This appeal is preferred against the order dated 23.6.2025 passed by the Family Court, Surajpur in Misc. Civil Case

No.14/2024 by which appellant's application under Section 5 of the Limitation Act for condoning the delay in filing application under Order 9 Rule 13 of the Code of Civil Procedure 1908 (henceforth 'the CPC') for restoration of ex-parte judgment dated 25.4.2024 in Civil Suit No.10A/2024, has been dismissed and consequent thereto restoration application has been dismissed holding it to be barred by limitation.

2. Facts of the case, in brief, are that an ex-parte judgment and decree of divorce dated 25.4.2024 was passed against the appellant-wife herein. Being aggrieved, appellant filed an application under Order 9 Rule 13 of CPC for setting aside of said ex-parte judgment and decree of divorce. Since, application under Order 9 Rule 13 of the CPC could not be filed within 30 days from the date of order, she also filed an application under Section 5 of the Limitation Act for condonation of delay in preferring application for restoration of ex-parte judgment and decree of divorce. Reasons assigned by appellant in her application for condonation of delay in filing application under Order 9 Rule 13 of CPC are that she came to know about the decree of divorce only when copy of the same has been produced by non-appellant during counselling proceeding of maintenance case pending in the Court at Aurangabad (Bihar) on 18.11.2024 and thereafter

she applied for certified copy of decree and other documents which were received by her on 27.11.2024 and thereafter application under Order 9 Rule 13 CPC was filed on 02.12.2024.

3. After service of notice, non-appellant/husband appeared before the Court and submitted his reply specifically denying the averments made in the application. On 20.2.2024 when appellant was trying to forcibly entered his house, at that time also she was intimated about filing of divorce petition and thereafter, the non-appellant got published the notice in local newspaper of Aurangabad city dated 29.02.2024. Despite all this, the appellant did not participate in the proceeding and therefore, she was proceeded ex-parte and it was followed by ex-parte judgment and decree of divorce. After the grant of decree of divorce, he has performed marriage on 23.11.2024.
4. Learned family Court vide order impugned has dismissed the application under Section 5 of the Limitation Act recording that appellant has not produced copy of order sheet dated 18.11.2024 in support of her claim that she acquired knowledge of the impugned judgment and decree of divorce only on said date. Rather, from the order sheets of maintenance case No.56/2024 it can be seen that non-appellant appeared in the Court at Aurangabad on 20.9.2024, he submitted an application for setting aside ex-parte

proceeding and based on which, ex-parte order was set aside on that date and the conciliation proceeding was drawn between the parties, which was failed and the matter was fixed for 18.11.2024. Thus, there is contradiction between the reasons mentioned in the application and the documents filed in support thereof. The Family Court has further recorded that in the facts of the case, period of limitation would start from 20.9.2024 and the appellant has not filed any application for setting aside of ex-parte decree within limitation from the date of getting knowledge of such decree and thereby she has failed to give sufficient reason for condoning the delay in filing application for setting aside ex-parte judgment and decree of divorce. Accordingly, rejected the application under Section 5 of Limitation Act and consequent thereto the application under Order 9 Rule 13 of CPC as barred by limitation.

5. Learned counsel for appellant would submit that appellant-wife had no prior knowledge of the divorce proceedings and the decree of divorce passed in the suit filed by the respondent- husband for dissolution of marriage. Appellant came to know about passing of ex-parte judgment and decree of divorce when certified copy of the same was furnished by non-appellant during counseling in maintenance case filed by her. Since appellant had no knowledge of the institution of the

divorce proceedings and, therefore, she could not appear before the Court. Upon getting such knowledge of ex-parte decree, the appellant immediately took necessary steps and filed an application for setting aside ex-parte judgment of divorce along with an application for condonation of delay.

6. He further submits that non-appellant has intentionally mentioned incorrect address of the appellant in the divorce petition i.e. Old Munsafi Mohalla, Aurangabad (Bihar), whereas correct address of appellant is “Old Munsafi Mohalla Nala Par, Aurangabad, Bihar 824101” and therefore, the summons issued at the address mentioned by non-appellant in divorce petition was returned un-served with note “noticee did not find upon inquiry’. Had the correct and complete address of the appellant been mentioned in the divorce petition, the summons would have been duly served upon her, enabling her to appear and contest the proceedings. Hence, alleged non-service of summons could not be attributed to any deliberate or intentional avoidance on the part of appellant.

7. He next contended that learned family Court has shown undue haste in concluding the divorce proceeding initiated by non-appellant. As per procedure prescribed for service of notice under Order 5 Rule 17 of CPC, after return of registered notice/summon issued to appellant un-served and failure to

serve notice/summons to the party concerned personally, the Court can direct for service of notice by way of affixture on the outer door or some other conspicuous part of the residence etc. and despite that, if the party concerned did not appear before the Court, then the Court can order for issuance of notice by way of paper publication. However, in case at the learned family Court while proceeding ex-parte against the appellant did not follow the procedure prescribed under Order 5 Rule 17 of CPC, therefore, the ex-parte decree of divorce dated 25.4.2004 is liable to be set aside.

8. He further submits that the expression "sufficient cause" occurring in Section 5 of the Limitation Act must receive a justice-oriented interpretation, keeping in view the nature and consequences of an ex parte decree of divorce. In case at hand the delay in filing application for setting aside ex-parte judgment and decree of divorce was neither intentional nor deliberate but occurred due to lack of notice of divorce petition, the family Court should have condoned the delay and decided the matter on merits, keeping in mind that ex-parte decree of divorce will have serious and far reaching civil consequences upon the appellant's marital status and rights.
9. Per contra, learned counsel for non-appellant/husband opposes the submission of learned counsel for appellant and submits that notice was sent to the appellant-wife through

registered post on her correct address but she has managed to return the same un-served. Thereafter appellant was served by way of substituted mode of service through publication. Despite service through the substituted mode, which is a deeming service to her, appellant did not appear before the Court and accordingly, she was proceeded ex-parte vide order dated 02.04.2024. Therefore, it cannot be accepted that appellant-wife was not aware about the divorce proceeding. In fact, she deliberately did not appear in divorce proceeding and therefore, the case was decided ex-parte against her.

10. He further submits that pursuant to direction of the Court, the notice was served upon appellant through substituted mode of service, which constitutes sufficient service, and hence, the sole reason assigned in the application for condonation of delay that appellant was never served with summons of the proceedings and had no knowledge of the decree of divorce, is not sustainable and cannot be termed as sufficient cause for condoning the delay.
11. Lastly, he submits that the matrimonial relation between appellant and non-appellant has come to an end. After passing of divorce decree, non-appellant has performed second marriage and therefore, there is no possibility of reunion between them. Hence, the appeal be dismissed.

12. We have heard learned counsel for the parties and perused the record of learned family Court.
13. From perusal of the documents available in paper book, it is appearing that on 09.01.2024 non-appellant has filed an application under Section 13 (1) (a) of the Hindu Marriage Act, 1955 seeking dissolution of marriage solemnized between the parties on 02.07.2021 in Aurangabad (Bihar) as per Hindu rites and rituals. Address of appellant-wife given in the memo of parties was mentioned as "Purani Munsafi Mohalla Aurangabad, Police Station, Tahsil and District Aurangabad (Bihar)". Said petition was registered as CS No.10A/2024 and notice / summons through registered mode was issued to appellant-wife at the address of appellant which is mentioned in the divorce petition by non-appellant. Perusal of order sheet dated 22.2.2024 of learned family Court would show that notice issued to appellant has been received unserved with a report 'for want of correct address' and thereafter, non-appellant made prayer for service of notice upon appellant through paper publication, which was accepted and he was permitted to serve the appellant through paper publication and posted the matter on 02.04.2024 for appearance of appellant/non-applicant therein. On 02.04.2024, non-appellant submitted copy of the notice published in local newspaper dated 29.2.2024. Since the

appellant remained absent despite service of notice through publication, the learned family Court proceeded against her ex-parte and thereafter an ex-parte judgment and decree of divorce was passed dissolving the marriage between the appellant and the non-appellant.

14. In the above facts of the case, the first and foremost question that arises for consideration of this Court is as to whether the procedure adopted by the family Court to secure service of summons on the appellant-wife was in accordance with law. If the answer to the aforesaid question posed is found in the affirmative, there can be no rescinding of an ex- parte decree even if it is proved that the summons were not duly served.
15. According to Section 10 of the Family Courts Act, 1984, the provisions of the CPC are applicable in the proceedings conducted by the Family Courts and hence, the provisions with regard to service of summons, as mentioned in the CPC, are also attracted for regulating the service of summons before the Family Courts.
16. Order 5 of the CPC makes provision for issue and service of summons. Mode of delivery of summons through registered/ speed post and the effect of refusal by the defendant to take delivery of the postal article containing summons, has been provided in Rule 9 of Order 5 of the Code. Rule 17 deals with

the procedure where defendant refuses to accept service or cannot be found, which reads thus:-

"17.Procedure when defendant refuses to accept service, or cannot be found.--Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant , [who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time] and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed."

17. Reading of above provision makes it clear that that when the defendant refuses to sign the acknowledgment, the serving officer is obliged to affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides and is obliged to return the original summons to the court from which it was issued, with a

report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

18. Rule 20 of Order 5 of CPC deals with the circumstances under which the substituted service can be effected. For the benefit of this order, the provisions of Rule 20 are being reproduced as under:-

“20. Substituted Service.- (1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

(1-A) Where the Court acting under sub-rule (1) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain.

(2) Effect of substituted service- Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.”

19. By reading Order 5, Rule 20 sub-rule (1) CPC it is clear that where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order suit summons to be served by affixing a copy thereof in some conspicuous place in the Court house and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain or in such other manner as the Court thinks fit.
20. In case at hand, perusal of order sheets of the divorce proceeding would show that the divorce proceeding was registered on 09.01.2024, on which date notice through ordinary and registered post to appellant herein was ordered to be issued on payment of process fee by non-appellant and the matter was ordered to be placed on 22.2.2024. Order sheet dated 22.2.2024 reveals that notice issued to appellant returned back with a note ‘on being inquired, noticee was not found’ and thereafter, an application was submitted by non-appellant herein for publication of notice in newspaper, was considered and the same was allowed by learned family

Court and directed for service of notice upon appellant herein by way of publication in a local newspaper having circulation in the area where appellant is residing. It was further ordered that matter be placed for appearance on 02.04.2024. According to order sheet dated 02.04.2024, non-appellant produced copy of newspaper dated 29.02.2024 in proof of publication of notice and since the appellant was not present before the Court nor was there any representation on her behalf, the family Court proceeded ex-parte against her and fixed the matter for ex-parte evidence of the plaintiff/non-appellant herein.

21. From the above it is evident that the notice to appellant of divorce proceeding was issued for the first time on 09.01.2024 and on the next date of hearing, upon receipt of notice un-served, the family Court accepted the application of non-appellant for service of summons through substituted mode and directed for publication of notice in local newspaper. In the considered opinion of this Court, the procedure adopted by the learned Family Judge for service of summons on appellant cannot be said to be in accordance with the procedure prescribed under Order 5 of CPC, but Court presumed that non-applicant/appellant herein is avoiding service.

22. After return of notice un-served, the learned family Court, in all fairness, ought to have ordered fresh notice/summons to appellant herein and thereafter, if the Court was satisfied that appellant herein cannot be found at the residence or she is avoiding the service of summons deliberately, should have ordered for service of notice through affixture as provided under Rule 17 of Order 5 of CPC. Only after making efforts to serve the appellant herein in terms of the procedure prescribed under Rule 17 of Order 5 of CPC, the application for substituted service could have been allowed by the family Court. However, the order sheet dated 22.02.2024 does not reveal that besides sending once the summons/notice to the appellant herein at the address furnished by non-appellant by registered post, the service is sought to be effected through the Process Server by affixing the summons on a conspicuous part of appellant's house where it was sought to be served. Thus, the family Court has straightaway ordered for substituted service without taking steps for service of summons in the manner as contemplated under Order 5 Rule 17 of CPC.
23. That apart, Order 5 Rule 20 of the CPC mandates the Court to be satisfied that the defendant is keeping out of the way with a view to avoiding service of summons, or that, for any other reason, the summons cannot be served in the ordinary

manner. Thus, exercise of jurisdiction under Order 5 Rule 20 CPC, therefore, necessarily requires the Court to record its satisfaction with regard to the steps taken by the plaintiff for effecting service of summons before directing substituted service. Such an order cannot be passed in a mechanical or routine manner and there must be an indication in the order that adequate and convincing materials were placed before the Court from which it could reasonably conclude that the defendant was deliberately keeping out of the way for the purpose of avoiding service, or that the summons could not, for any other reason, be served in the ordinary course. In the absence of such satisfaction being recorded on the basis of relevant materials, the consequential order of substituted service would be bad in law.

24. Reading of the order sheet dated 22.2.2024 reveals that application for substituted service moved by non-appellant herein was accepted by the Court, recording that notice has repeatedly been issued to appellant herein but the same could not be served upon her, which goes to show that she is deliberately avoiding service of notice and in such a situation, it would be proper to serve the notice through publication in local newspaper to secure presence of appellant herein. However, while recording the reason for its satisfaction in order sheet dated 22.2.2024, learned family Court has lost

sight of the fact that divorce proceeding itself was filed on 9.1.2024. Thus, the conclusion arrived at by the family Court for ordering substituted service observing that number of times notice through registered post were issued, the appellant herein was keeping out of the way with a view to avoiding service, is vague, does not disclose the correct factual basis on which such satisfaction was arrived at and reflects an absence of proper application of mind. The observation of issuance of registered post notice many times is contrary to records.

25. In the matter of **Smt. Yallawwa vs Smt. Shantavva** reported in **1997 (11) SCC 159**, Hon'ble Supreme Court has observed that substituted service has to be resorted to as a last resort where the defendant cannot be served in the ordinary way and the Court is justified that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way. Relevant portion of the decision is extracted herein below:-

“5....The learned counsel for the respondent was also justified in submitting that the Trial Court could not have almost automatically granted the application for substituted service without taking steps for serving the respondent by ordinary procedure as laid down by order V Rules 12, 15 and 17 C.P.C. It must be kept in view that substituted service has to be resorted to as the

last resort when the defendant cannot be served in the ordinary way and the court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way. In the present case, it appears that almost automatically the procedure of substituted service was restored to....”

26. In light of the decision of Hon’ble Supreme Court in **Yallawwa (supra)** and in the given facts and circumstances of the case, this Court is of the considered view that the Family Court passed ex-parte decree in a hurried manner without serving notice upon appellant and without following due procedure of law laid down under Order 5 of CPC. The Court overlooked that the applicant therein is the husband of appellant herein, might have visited his in-laws house i.e. house of appellant herein, and therefore, in the facts of the case when notice returned un-served with a note “noticee not found on enquiry”, the Family Court ought to have directed to pay fresh process fee to serve notice on correct address. The family Court has not recorded or mentioned about the ordinary notice service report. As per law, any of the parties shall not be made to suffer an order without being an opportunity of hearing. The question posed is answered accordingly.

27. In case of **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & Ors.**, reported in **(2013)**

12 SCC 649, Hon'ble Supreme Court in para 21 of the judgment has culled out the principles on the issue of condoning the delay, relevant portion of which reads as under:-

"21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while undefined dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be undefined attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted, or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.....”

28. For the aforementioned discussions and reasons, we are of the view that the explanation offered by the appellant for condonation of delay is a plausible one. We are thus satisfied that sufficient cause has been shown by appellant herein for condonation of delay in filing the application for setting aside ex-parte judgment and decree.

29. In the result, appeal is allowed. Impugned order dated 23.6.2025 is set aside and application under Section 5 of the Limitation Act is allowed. The matter is remanded back to the Family Court Surajpur for deciding the appellant's application filed Order 9 Rule 13 CPC on merits in accordance with law.

Both the parties are directed to appear before Family Court concerned on 12.10.2026.

30. A copy of this judgment along with record be sent forthwith to the Family Court concerned.

Sd/-
(Parth Prateem Sahu)
Judge

Sd/-
(Sachin Singh Rajput)
Judge

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