

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Hearing and Order: 9th July, 2015

Matrimonial Appeal (FC) No.92/2014

SUMITA MAZUMDER Appellant

Through: Mr.Rituraj Biswas, Adv.

versus

DEBASISH MAZUMDER Respondent

Through: Mr.Sanjiv Bahl, Adv. with
Mr.Eklavya Bahl, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J (Oral)

1. The present appeal has been preferred against the order dated 30th April, 2014 passed by the learned Principal Judge, Family Courts in SMA No.7/11, praying for setting aside and for quashing the orders dated 20th November, 2012 & 30th April, 2014. The arguments advanced by the learned counsel for the appellant is that an ex parte decree for granting divorce was passed by the learned Principal Judge, Family Courts vide judgment dated 20th day of November, 2012 and thereafter the appellant sent a legal notice on 2nd January, 2013 which was replied to by the respondent on 29th January, 2013 to the effect that the decree of divorce

Section 27(1)(d) of the Special Marriage Act, 1954 and thus the marriage between the parties stands dissolved. Thereafter, she instructed the advocate to apply for the certified copy which was duly obtained thereafter. The appellant happened to be a patient of arthritis and remained under treatment in July, 2013. Ultimately the appellant filed an application under Order IX Rule 13 CPC along with the application for condonation of delay. Notice of the application under Order IX Rule 13 CPC as well as of condonation of delay was given to the respondent herein and ultimately an application under Order IX Rule 13 read with Section 151 CPC for setting aside the ex parte decree was dismissed as infructuous.

2. Aggrieved by the same, the present appeal has been filed. Factual matrix in the present appeal is that the marriage between the petitioner and the respondent was solemnized on 27th January, 2008 according to Hindu rites and ceremonies. After marriage, the parties lived together and it was duly consummated, however, no child was born from the wedlock. The respondent was working with Tata Consultancy Services Limited and was posted in Delhi and after marriage, the appellant too went to Delhi to live with her husband. In February, 2009, mother-in-law of the appellant also went to Delhi to reside with her son and daughter-in-law and thereafter the attitude of the respondent towards the appellant changed. The respondent and his mother expressed their displeasure

regarding the gifts and valuables given at the time of marriage. The appellant was pressurized to demand an amount of Rs.5,00,000/- from her father to which she disagreed as a result of which the taunts and the pressure for irrational demands kept on increasing even though the parents of the appellant had already given sufficient dowry, gifts and money at the time of marriage. In December, 2009, the respondent was to join his office in USA but the appellant was medically unfit to travel. The respondent refused to sign the medical bond required for the appellant to travel to the USA and thus she was left at her parent's house in Guwahati. After the appellant was declared medically fit to travel to USA, no efforts were made by the respondent to take her to USA.

3. Thereafter, the respondent husband filed a petition under Section 27 (1)(d) of the Special Marriage Act seeking dissolution of marriage which was allowed vide judgment dated 20th November, 2012.

4. The petition for dissolution of marriage was filed on 22nd February, 2011 and ex parte decree of divorce was passed on 20th November, 2012 by the Family Court. The petitioner chose to move the application under Order IX Rule 13 CPC and not to file the appeal against the ex parte decree dated 20th November, 2012. Thereafter, the application under Order IX Rule 13 was dismissed on 30th April, 2014 on the ground that the respondent-husband had already remarried and the decree for dissolution of marriage was not challenged within the stipulated period.

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No application for condonation of delay was filed. Subsequently, the present appeal has been filed for setting aside of ex parte decree along with the application for condonation of delay.

5. The appeal is opposed by the learned counsel for the respondent. It is submitted by learned counsel for the respondent that the appellant was well aware of the proceedings and also about the passing of the decree. He further submits that it is not in dispute that the appellant was well aware about the divorce and she had not taken any steps for setting aside of the same and subsequently, after a lapse of long time, the respondent has entered into a fresh matrimonial alliance.

6. At the outset, the appellant has restricted her challenge to order dated 30th April, 2014 as she had chosen to avail the remedy under Order IX Rule 13 CPC for setting aside the ex parte decree dated 20th November, 2012.

7. So far as the order dated 30th April, 2014 is concerned, perusal of the record before us shows that the ex parte decree was passed by the Court below on 20th November, 2012 and the same was within the knowledge of the appellant. She was particularly informed about this fact by the respondent in the reply filed by the respondent to the legal notice dated 2nd January, 2013 sent by the appellant. A reply was also sent by the respondent to the notice sent by the appellant on 29th of January, 2013. Perusal of record shows that in the present case, counsel for the

appellant was instructed to apply for the certified copy which was applied for and obtained on 1st March, 2013. Thereafter, no step was taken by the appellant to challenge the ex parte decree and ultimately by way of moving the application under Order IX Rule 13 CPC on 4th October, 2013, after a considerable delay, the ex parte decree was challenged and the reason stated is that the appellant was suffering from arthritis and thus she could not file the application for setting aside the ex parte decree within the stipulated time. Medical certificate filed shows that she was advised rest of fifteen days after 31st July, 2013.

8. One of the consideration on which the doctrine of limitation is based upon is that there is presumption that a right not exercised for a long time is a non-existent. The object of limitation prescribed under the law is to prevent disturbance or deprivation of what may have been acquitted in equity and justice by long enjoyment or what may have been lost by party's own inaction, negligence or laches. The purpose of rules of limitation is to induce the claimants to be prompt in claiming relief. Parties who seek to uphold their legal rights should be vigilant and should consult their legal experts as quickly as possible so that they cannot sleep over the matter to enforce their rights which is likely to cause prejudice to other parties. This is the reason why period of limitation is prescribed.

8. Laches have important bearing while deciding the petition for dissolution of marriage. Persons whose right is being intruded by the opposite parties must keep vigil and must not sleep over their right. Law needs to be put into motion as and when somebody's legitimate rights are invaded otherwise it will be taken that he has given consent to the other party to carry on with the affairs. In the instant case, the appellant claims that she was suffering from arthritis and thus she could not file the application for setting aside the ex parte decree within time. She has filed medical certificate indicating that she was advised rest for 15 days after 31.07.2013. It culled out from the record that the appellant was well aware of the proceedings and deliberately did not take any steps to pursue the matter or to set aside the ex parte decree. Therefore, prima-facie the appellant is guilty of laches.

9. **LACHES** is an "unreasonable delay pursuing a right or claim in a way that prejudices the opposing party". It is an equitable defence, that is, a defense to a claim for an equitable remedy. The respondent has asserted that the appellant has slept on her rights and as a result of this inordinate delay, the circumstances have changed such that it is no longer just to grant the relief claimed by the appellant. In other words, failure to assert one's rights in a timely manner can result in a claim being barred by laches. Laches is associated with one of the maxims of equity

Vigilantibus non dormientibus æquitas subvenit. (Equity aids the vigilant, not the sleeping ones).

9. The Hon'ble Supreme Court in ***Orissa Manganese & Minerals Ltd. vs. Synergy Ispat Pvt. Ltd.*** 2014 SCC OnLine SC 711 held that:

“The Petitioner is not entitled to any interlocutory injunction in aid the claim for specific performance of the selling agreement that it has carried to the arbitral reference. In the light of the prima facie view taken that the Metsil and the petitioner combine had entered into a composite arrangement with the respondent, the petitioner's knowledge of the alleged breach of the agreement by the Respondent would date back several months before it made the polite enquiry with the respondent by its letter of December 24, 2009. Such delay would amount, in the circumstances to latches and conduct encouraging the respondent to believe in the petitioner's endorsement and acceptance of the breach. The petitioner is not entitled to any order in furtherance of its claim on account of the negative covenant since the selling agreement cannot be seen to be a stand-alone contract. In any event, the negative covenant in clause 14.1 of the selling agreement entitled the petitioner to exclusively obtain the ore extracted from the Ghatkuri mines by Metsil and the petitioner ought to have been aware, in the light of the facts now brought on record by the respondent, that the raising agreement with Metsil had been terminated by the respondent.”

10. In ***Babu Singh and Others vs. Union of India and Others*** (1981) 3 SCC 628, it was observed as under :

*“Before we conclude, it must be pointed out that the writ petition was filed on April 22, 1969, i.e. nearly six years and one month after the publication of the impugned notifications and about five years after the award. No explanation is offered why writ petition was filed after such an inordinate delay and after the entire process of acquisition was over. The High Court dismissed the writ petition in limine presumably on account of delay. This Court in *Aflatoon v. Lt.-Governor of Delhi and Indrapuri Griha Nirman Sahakari Samiti Ltd. v. State of Rajasthan* held that if a person allowed the Government to complete the acquisition proceedings on the basis that the notification under Section 4 and declaration under Section 6 were valid and then attacked the notification on the grounds which were available to him at the time when the notification was published, it would be putting a premium on dilatory tactics. **The length of the delay is an important circumstance because of the nature of the acts done within the interval on the basis of the notification and declaration and, therefore, a challenge to a notification under Section 4 and a declaration under Section 6 of the Act should be made within a reasonable time thereafter.** If it is not so done the petition is liable to be dismissed. This appeal must fail for this additional reason because the challenge to two notifications was after a period of six years and after the whole process of acquisition was over and the State Government had spent a considerable amount in carrying out the public purpose.”*

11. After hearing the learned counsel for the parties at length and perusal of the order dated 30th April, 2014 and the facts and circumstances in which the order has been passed, we are of the opinion that the ex parte decree passed on 20th of November, 2012 was well within the knowledge of the appellant, after receipt of the reply to notice

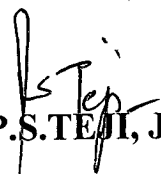
on 29th January, 2013, but the appellant did not take any legal steps for a considerable period which resulted in the application becoming infructuous as in the meanwhile the second marriage was performed by the respondent.

12. After due consideration of law laid down in the above mentioned cases, we are of the considered opinion that the appellant, despite having knowledge of all the facts, had not availed the legal remedy within the stipulated time. It was in-action, delay, lackadaisical approach & insouciant concern on the part of the appellant not to question the decree within the time frame which resulted into the respondent entering into another marriage and to an unwarranted situation which ultimately rendered the application under Order IX Rule 13 CPC infructuous.

13. In such a scenario, we are of the considered opinion that the Trial Court has rightly passed the orders under challenge. Consequently, no grounds to set aside the ex parte decree dated 20th November, 2012 and the order dated 30th April, 2014 are made out.

The appeal stands dismissed.


KAILASH GAMBHIR, J


P.S. TEJI, J.

JULY 09, 2015

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