

HIGH COURT OF CHHATTISGARH, BILASPUR**FA (M) No. 161 of 2015**

- Smt. Gurpreet Kaur W/o Shri Amarpal Singh, aged about 29 years, R/O-D/o Shri Gurbeer Singh Chawala, Shri Guru Singh Sabha, Guru Dawara, Prem Nagar, Madan Mahal Gupteshwar Road, P.S.: Garha, Jabalpur, Jabalpur (M.P.).

---- **Appellants****Versus**

- Amarpal Singh S/o Shri Rajendra Singh Rajpal, aged about- 35 years, R/o-Preet Bekari & Cake Parlour, Itwari Bazar, Rani Road, Korba, P.S.: Korba, District-Korba (C.G.).

---- **Respondent**

For Appellant	:-	Ms. Ruchi Nagar, Advocate
For the Respondent	:-	Shri Rishi Sahu, Advocate

Hon'ble Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board**Per Thottathil B. Radhakrishnan, Chief Justice****04.10.2017**

1. We have heard the learned counsel for the Appellant and the learned counsel for the Respondent.
2. The Appellant is the wife and the Respondent is the husband. An application for restitution of conjugal rights was filed by the Respondent. That has been decreed *ex-parte* the wife. She applied to have the *ex-parte* decree set aside. It was accompanied by an application seeking condonation of delay of 142 days. We have seen the grounds raised for condonation of delay and also to set aside the *ex-parte* decree.
3. Having regard to the materials on record, we are of the firm view that this is an abundantly fit case where the wife should have been given an appropriate opportunity to contest the application for restitution of conjugal rights on its merits. We are also satisfied that the appellant had established

sufficient cause to set aside the ex-parte decree and also to condone the delay in applying to set aside the ex-parte decree for restitution of conjugal rights. Having regard to the rival contentions of the parties before the Court below, the parties should have either been persuaded to live in peace on settlement of disputes; or, otherwise verdict should have been handed down, on contest on merits; never on default.

4. For the aforesaid reasons, the impugned order is liable to be set aside.
5. In the result, this appeal is allowed. The impugned order is set aside and the application to set aside the ex-parte decree for restitution of conjugal rights and the application for condonation of delay as filed before the Family Court in I.A. No.4, are allowed. The parties are directed to mark appearance before the Court below on the 14th November, 2017 to enable that Court to further proceed with the case. The parties will wait for no notice from the Family Court regarding such posting of the case.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Arvind Singh Chandel)
Judge