

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 8 of 2018

- Smt. Bindia Tamrkar W/o Rajkumar Sao Aged About 25 Years, R/o Kedarpur, Ambikapur, P.S. And P.O. Ambikapur, District Surguja, Chhattisgarh, District : Surguja (Ambikapur)

---- **Appellant**

Versus

- Rajkumar Sao S/o Late Charka Sao, Aged About 34 Years ,R/o Village Darbar Toli, Jashpur Nagar, P.S. And P.O. Jashpur, District Jashpur, Chhattisgarh

---- **Respondent**

For Appellant	:	Ms. Priyanka Mehta, Advocate
For Respondent	:	Shri Sudeep Verma, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

Judgement on Board by Manindra Mohan Shrivastava,J.

27/06/2018

With the consent of the parties, the appeal is heard finally.

This appeal is directed against the impugned order dated 15.12.2017 by which the learned Court below has rejected the appellant's application for setting aside ex-parte decree passed by the trial court in the matter of application for grant of decree of divorce filed by the respondent.

Respondent filed an application before the Family Court for grant of decree of divorce on the ground as enumerated in Section 13 (1) (i) and (i-क) of Hindu Marriage Act. It appears that the appellant was proceeded ex-parte in the suit which eventually lead to passing of an ex-parte decree on 21.10.2016. Appellant, thereafter, moved an

application for setting aside ex-parte decree. The application was barred by approximately 45 days. Certain reasons were stated in the application as the sufficient cause why the appellant could not remain present in the proceedings and proceeded ex-parte. Learned court below has, however, rejected the application giving rise to this appeal.

Counsel for the appellant submits that after reply was filed by the respondent, learned court below straightway proceeded ex-parte without affording opportunity to lead oral, documentary evidence to establish that the appellant was having sufficient cause to make out a case for setting aside ex-parte decree. It is submitted that the consequences of passing the decree of divorce are serious in nature and therefore, in these circumstances, the appellant's application for setting aside ex-parte decree ought to be duly enquired into by the learned court below rather than rejecting the same without affording any opportunity to lead oral and documentary evidence. It is further submitted that the learned court below committed illegality in holding that when separate application for condonation of delay have not been filed, the application was not maintainable. Relying upon the decision of the Supreme Court in the case of **Bhagmal & Others Vs. Kunwar Lal & Others** reported in **AIR (2010) Vol. 12 SCC 159** and another judgment of the M.P. High court in the case of **Laxmi Narayan Vs. State of M.P.** reported in **M.P. Weekly Notes Vol. 2 MP 310**, it is submitted that the court below has committed illegality in not allowing the parties to lead evidence in support of their case.

On the other hand, counsel for the respondent submits that on a mere asking, the decree passed in favour of the respondent would not be set aside. He submits that the appellant failed to lead appropriate evidence before the court below to establish that she had a sufficient

cause for setting aside ex parte decree therefore she is not entitled for any relief. Reliance has been placed in the decision in the case of **Parimal Vs. Veena @ Bharti** reported in **(2011) 3 SCC 545** and in the matter of **Rahul Dubey Vs. Vibha Dubey** reported in **(2012) 11 SCC 748**.

We find that one of the main reason for learned court below to reject the application for setting aside ex-parte decree is that the appellant did not move separate application for condonation of delay in filing the appeal.

In view of what has been authoritatively pronounced, in the opinion of the Apex Court in the matter of **Bhanwarlal Dugar & Others Vs. Bridhichand Pannalal & Others** reported in **(2010) 12 SCC 164**, the learned court below ought to examine the cause shown for delay without insisting on filing of separate application.

We find that as soon as the reply was filed by other party, learned court below proceeded to pass the order. There is nothing to show that the parties were afforded opportunity to lead their respective evidence which they may have desired in support of their respective case. Court below has held that the appellant failed to lead any evidence in proof of the fact that she had sufficient cause for her non appearance during trial.

Considering the above submission of learned counsel for the parties without going into as to whether the appellant has established in proving that she had sufficient cause, we are inclined to set aside the impugned order mainly on the ground that the appellant was deprived of opportunity to lead proper evidence including oral evidence that she was prevented by sufficient cause. Accordingly, the impugned order is

set aside and the parties shall appear before the learned court below and thereafter will be granted opportunity to give oral documentary evidence in the matter of enquiry into the application under Order XIII Rule 9 CPC for setting aside the decree. Appeal is allowed accordingly.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge