

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 141 of 2018**

- Sudesh Verma Late Radheshyam Verma, Aged About 42 Years R/o Jai Bharat Tal, Tilak Nagar Bilaspur, District Bilaspur, Chhattisgarh

---- Petitioner

Versus

- Smt. Vibha Verma W/o Shri Sudesh Verma, Aged About 36 Years R/o Typing Institute Kotwali Road, Sagar, District Sagar, Madhya Pradesh

---- Respondent

For Appellant	:	Shri Dheerendra Pandey, Advocate
For Respondent	:	Shri Vaibhav P. Shukla, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Shri Justice Gautam Chourdiya****Order On Board****24/09/2018**

This appeal is directed against impugned order dated 13/04/2018 by which the Court below has allowed the application for setting aside ex-parte decree.

2. The appellant filed an application for grant of decree of divorce against his wife / respondent on various allegations including allegation of adultery, cruelty etc.

3. Learned Family Court passed ex-parte decree as the respondent failed to appear. Thereafter, the respondent moved an application under Order 9 Rule 13 CPC for setting aside ex-parte decree which was allowed by impugned order giving rise to this petition.

4. Learned counsel for the respondent submits that the learned Court below acted illegally and perversely in allowing application for setting aside ex-parte decree even though there was no sufficient cause for non-appearance of the respondent in the divorce proceedings. He would draw attention of this Court to the order sheets to submit that despite repeated opportunities, the respondent did not appear. According to him, merely because the respondent had moved the Supreme Court for transfer of proceedings from one Court to the other Court, would not by itself, constitute sufficient

cause for non-appearance.

5. On the other hand, learned counsel for the respondent submits that the learned Court below has exercised discretion to condone the delay on the cause that in the matter of dispute between the parties, the respondent/wife had already moved an application before the Supreme Court for transfer of the case and even mediation proceedings were not concluded. In this background, passing of ex-parte decree of divorce has seriously and adversely prejudiced the respondent / wife when she was not granted opportunity to contest the matter on merits.

6. We have gone through the impugned order and records of the case. We find that indisputably in the matter of dispute between the husband and wife, the appellant / husband filed an application for grant of decree of divorce, where the wife had been contesting the matter and even application for transfer of proceedings was moved before the Supreme Court. Mediation proceedings were also on. It appears that because of this back ground, the wife could not remain present which led to passing of ex-parte decree.

We are convinced with the facts, circumstances and cause shown by the wife which led the learned Trial Court to treat the same as sufficient cause and set aside the ex-parte decree in accordance with law.

7. We hasten to add that in matters like this, where decree of divorce is sought on the ground of adultery, the ex-parte decree may have serious adverse consequence. In such matters while examining prayer for setting aside ex-parte decree, the Court has to adopt somewhat liberal approach in arriving at sufficiency of the cause shown by the spouse suffering decree.

8. In view of the aforesaid considerations, we are not inclined to interfere with the order passed by the Court below and this appeal is dismissed.

9. On the prayer of learned counsel for the appellant, we would direct the learned Family Court to expeditiously conclude the trial without granting unnecessary adjournment to any of the parties and in the spirit of provisions contained in Family Courts Act including provisions contained in Section 9 of the Act.

Records of the Court below be remitted forthwith.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Gautam Chourdiya)
Judge