

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 134 of 2019

- Ramesh Kumar Sahu S/o Shri Rup Singh Sahu Aged About 30 Years Caste - Teli, R/o Village Mohadipat, Post Khursuni, Tahsil Gunderdehi, District Baloda Chhattisgarh. Office Address - Unit No. 86, Arms Regiment Rank S.W.R. No. 15501262 Ex Head Quarter Squine, Through 56 A.P.O. Babina, District Jhansi Uttar Pradesh

---- Appellant

Versus

- Duleshwari Sahu W/o Shri Ramesh Kumar Sahu Aged About 27 Years Caste - Teli, R/o Jagrity Chowk, Behind Teen Darshan Mandir (Jetha Hotal) Ward No. 18, Camp - 1, Bhilai, Tahsil And District Durg Chhattisgarh

--- Respondent

For Appellant	:	Mr. P. K. Patel, Advocate.
For Respondent	:	Mr. Jitendra Gupta, Advocate.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

15/07/2019

1. Heard on (I. A. No. 1) application for condonation of delay in filing the appeal.
2. Upon due consideration, the cause shown in the application and a short period of delay of about 64 days, we are inclined to condone the delay.
3. The application is allowed. Delay is condoned.
4. Heard learned counsel for the parties.
5. The short and pointed submission of learned counsel for the appellant is that the only operative reason for the Family Court to dismiss the application under Section 13 of the Hindu Marriage Act was that the amount of maintenance that had to be paid under Section 125 Cr. P. C. proceedings were not paid. It is submitted, that could not be made a basis to dismiss the application under Section 13 of the Hindu Marriage Act.
6. Learned counsel for the respondent would argue that as the appellant was not present on the date when the case was fixed for framing issues and the Family Court further found that he was avoiding to appear and was not also

paid amount payable under an order passed in Section 125 Cr. P. C., the case was dismissed for want of prosecution.

7. Having gone through the impugned order dated 09.01.2019. We have no doubt that the impugned order is unsustainable in law.
8. Indeed, the proceedings were under Section 13 of the Hindu Marriage Act. Though, the appellant was present, he was duly represented by his counsel and it was informed that he could not appear because he could not get leave. The order shows that the only operative reason for the Family Court was to dismiss the case on the basis that the appellant had not paid the amount which he was liable to pay under an order passed under Section 125 Cr. P. C.
9. We are afraid, such failure could not be made a basis to dismiss the divorce petition. It is not a case where the appellant, on account of non-prosecution of the case, the proceedings were liable to be dismissed. If the appellant is under liability to discharge payment as per order of the Magistrate passed under Section 125 Cr. P. C., the remedy of the respondent is to approach appropriate Forum to seek execution of that order.
10. In view of the above consideration, the impugned order cannot be sustained in law and is, therefore, set aside.
11. The Family Court shall decide petitioner's application for grant of decree of divorce in accordance with law.
12. The appeal is accordingly disposed off.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge