

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal (M) No. 156 of 2018

- Amit Kumar Soni, aged about 34 years, S/o Mohan Lal Soni, R/o Anupam Nagar, Near Gyansgar, Ward No.19, Tahsil and District Rajnandgaon (CG)

---- Appellant

Versus

- Smt. Ruprekha @ Rupal Soni, W/o Amit Kumar Soni, aged about 32 years, R/o Anupam Nagar, Near Gyansagar, Ward No.19, Tehsil and District Rajnandgaon (CG)

---- Respondent

For the Appellant	:-	Mr. Kalpesh Ruparel, Advocate
For the Respondent	:-	Mr. B.D. Guru, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board by Hon'ble (Smt.) Justice Vimla Singh Kapoor, J.

30.07.2019

The facts involved in the case in hand, in brief, are that the appellant and respondent herein got married on 12.05.2003 as per the Hindu rites and rituals and out of their wedlock they were blessed with two children. With the passage of time the respondent/wife is alleged to have developed adamant and termagant attitude making the two live separately. Subsequently, the appellant/husband preferred an application under Section 13 of the Hindu Marriage Act for dissolution of marriage by decree of divorce which was decided *ex-parte* in his favour vide order dated 03.12.2014. On challenge being made by the respondent/wife, the said *ex-parte* order dated 03.12.2014 came to be set aside; the matter was restored to its original number and was fixed for

evidence on 17.10.2016. However, as on the said date neither the appellant nor his advocate could remain present in Court, his application was dismissed in his absence. Later on, assigning the reason for his absence as being in the grip of debilitating jaundice, he preferred an application for setting aside the order dated 17.10.2016 and restoration of his application under Section 13 of the Hindu Marriage Act coupled with an application for condonation of delay under Section 5 of the Limitation Act stating that he had received the information regarding the dismissal of his application only on 28.11.2016 and, therefore, the delay in filing the application occurred. However, the application filed by the appellant/husband under the Limitation Act came to be dismissed which resulted in dismissal of his application for restoration as well.

2. Having heard counsel for the parties and taking into consideration the documents on record, it is apparent that the learned Family Court has committed an error in not considering the case of the appellant/husband on its own merits and straightway rejected his application under the Limitation Act ignoring the reason of his suffering from jaundice and became enervated as a result thereof which obstructed him from approaching the Court by filing the restoration application in quite promptitude. Such approach of the Court below, in other words, has deprived the appellant/husband of being heard on merits and thus put him to an irreparable loss. Keeping in mind the legal

position holding the ground that no one should be condemned unheard, the order impugned passed by the Family Court is set aside and the case is remanded back to the said Court with a direction to hear afresh, condone the 18 days delay and then decide the same on its own merits as expeditiously as possible preferably within a period of four months from the first date of listing of the case there-at. Parties are expected to render their fullest cooperation to the Family Court so as to ensure the disposal of the case within the time framed fixed above.

3. Consequently, for the afore-stated reasons the appeal is allowed and the order impugned is set aside.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Jyotishi

Sd/-

(Vimla Singh Kapoor)
Judge