

HIGH COURT OF CHHATTISGARH, BILASPUR

FA(MAT) No. 73 of 2019

Ghanshyam Rathore S/o Fulsingh Rathore, aged About 41 Years
R/o Plot No. 266/2, Near Vidyut Sub Station, Shivaji Nagar,
Niharika Korba, Tahsil and District Korba, Chhattisgarh

--- Appellant

Versus

Smt. Gayatri Rathore W/o Ghanshyam Rathore, aged About 40
Years R/o Qtr. No. 275, Sector 03 Type A, Balco Township,
Korba, Tahsil and District Korba, Chhattisgarh

--- Respondent

For the Appellant	:	Dashrath Kushwaha, Advocate
For the Respondent	:	None

Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board by Vimla Singh Kapoor, J.

06.12.2019

What is exposited from the succinctly stated factual scenario is that the acrimonious relationship between the appellant and the respondent who entered a nuptial wedlock as per the Hindu rites and rituals on 02.07.2002 made the husband file a Civil suit No. 153-A/2017 for dissolution of marriage. Learned Court below vide its judgment dated 27.01.2018 decreed the suit in favour of the husband *ex parte* whereby the marriage solemnized between the parties came to be dissolved.

2. The stand taken by respondent/wife in Civil Suit No.2/2018 filed under Order 9 Rule 13 read with Section 151 CPC for setting aside the *ex parte* judgment and decree of divorce along-with an application filed under Section 5 of the Limitation Act for

condoning the delay, was that after she came to know about the same through her elder sister, she applied for certified copy of the said *ex parte* decree of divorce but she has emphatically stated that before passing of the said *ex parte* decree of divorce no notice was served on her. Learned Court below by the order impugned herein dated 09.09.2019 allowed the application filed by the wife and set aside the *ex parte* judgment and decree dated 27.01.2018 dissolving the marriage between the parties.

3. After hearing counsel for the appellant/husband and going through the documents on record, this Court did not come across any document which could show that before passing the *ex parte* decree of divorce any sort of notice was served on the respondent/wife. Though one Mahendra Satpathi examined by the husband has tried to state about service of notice by him on the respondent/wife, yet his say about the same does not appear to be very convincing as though the house number where the notice was to be served was 03A/275 but the notice mentioned the address as 03/275, it is surprising as to how he reached there and served the notice on her. Another factor creating doubt on his statement is why this witness being a process server in the concerned Court took that much interest in effecting service of notice on an address which was not superscribed thereon. On the contrary, the version of the respondent/wife that as soon as she came to know through her elder sister about the *ex parte* dissolution of marriage, she rushed to the Court, obtained the

certified copy of the said order and only then she came to know about the sorry state of affairs. The husband however did not bring anything on record on the basis of which service of notice on the respondent/wife could be demonstrated.

4. Thus, the judgment impugned setting aside the *ex parte* judgment and decree by which the marriage between the parties had come to an end, and also allowing the application filed under Section 5 of the Limitation Act, appears to be just and proper calling for no interference by this Court with the same. Apart from merit aspect of the matter, 26 days delay in filing the appeal has also not been satisfactorily explained which too is an additive for dismissal of the appeal.

5. Accordingly, the appeal being without any substance is liable to be and is hereby dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge

A/Jyotishi