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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 25.01.2019

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MAT.APP.(F.C.) 325/2018

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..... Appellant

Through: Mr.Trilok Chand and Ms.Rita,
Advocates with Appellant in person.

versus

S B K

..... Respondent

Through: Respondent in person.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

CM APPL. 53232/2018 (delay)

1. This is an application under Section 5 of the Limitation Act, filed by the appellant seeking condonation of 50 days delay in filing the appeal.
2. The prayer made in this application is not opposed by the respondent who is present in court. Accordingly, the delay in filing the appeal is condoned.
3. The application stands disposed of.

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4. The present appeal has been filed assailing the order dated 06.09.2018 vide which the Family Court has dismissed an application moved by the appellant under Order IX Rule-13 of Code of Civil Procedure, 1973 (CPC) read with Section 151 CPC for setting aside ex-parte judgment and decree of divorce passed between the parties on 09.11.2016.
5. The marriage between the parties was solemnized on 12.03.2000 and a daughter was born from the said wedlock, who is now 15 years of age. Disputes and differences having arisen between the parties, the respondent/husband filed divorce petition against the appellant on 18.11.2009 under Section 13 (1) (ia) of the Hindu Marriage Act. The said petition was allowed and an ex-parte decree of divorce on ground of 'cruelty' was passed in favour of the respondent/husband and against the appellant/wife on 09.11.2016. Reading of the impugned judgment shows that the appellant had stopped appearing after filing the written statement and was proceeded ex-parte vide order dated 09.05.2012. However, she subsequently joined the proceedings but stopped appearing again and was proceeded ex-parte on 01.12.2014.
6. The Family Court has dismissed the application under Order IX Rule-13 CPC on the ground that the appellant had been appearing till 14.08.2013 and had complete knowledge of the pending petition and the proceedings. The Family Court was of the view that the medical ground put forth by the appellant also did not enure to her advantage, since the OPD slips from 09.01.2013 to 11.12.2013 were for skin

treatment and thereafter from April 2014 onward for Asthma, Cough and chest injury, but there was no document which had advised bed rest to the appellant, preventing her from pursuing the matter. As regards the ground of the appellant that she had been constantly in touch with her counsel, but the counsel did not intimate to her of any date of hearing or the fact that she had been proceeded ex-parte, the Family Court has observed that no complaint had been filed by the appellant against the counsel before the Bar Council of Delhi and that the practice of blaming previous counsels has been seriously deprecated by the High Court. Finding no merit in the grounds taken by the appellant for setting aside the ex-parte decree, the Family Court dismissed the application. In addition to this, the application is also dismissed being filed belatedly.

7. Learned counsel for the appellant has contended that the Family Court had erred in not appreciating that she had instructed her counsel to appear in the matter but he chose to absent himself from the proceedings and did not even inform to her that he was not prosecuting her case. She was under bonafide plea that her counsel would be prosecuting the case on her behalf diligently and had no reason to suspect that he was not appearing in the matter. She further submitted that the appellant had no knowledge that complaints could be filed against advocates with Bar Council at Delhi and due to this ignorance; she did not file any such complaint. However, subsequently she has filed a complaint dated 26.10.2018 before Delhi Bar Council and which is placed on the record of this Court. She further contended that the appellant came to know about the judgment

and decree only when she received notice under Public Premises Act as she was living in a Government Accommodation, allotted to the respondent. Learned counsel has further contended that the appellant has a minor child and is facing acute financial crisis and does not want to separate from the respondent and, therefore, application under Order IX Rule-13 CPC be allowed and the ex-parte judgment and decree be set aside.

8. Pursuant to the notice issued by this Court on 18.12.2018, the respondent has appeared in person. He submits that he has no objection if the aforesaid application filed by the appellant is allowed and the ex-parte judgment and decree is set aside, provided the appellant does not take any unnecessary adjournment in the matter in future and does not delay the proceedings before the Family Court.
9. In view of the submissions made by the respondent, we allow the present appeal setting aside the order dated 06.09.2018. The application under Order IX Rule-13 CPC read with Section 151 CPC is allowed and the ex-parte judgment and decree dated 09.11.2016 dissolving the marriage between the parties is hereby set aside.
10. Appellant had filed her written statement and the respondent had examined as PW1. The Family Court is directed to proceed with the matter from this stage and permit the appellant to cross-examine the petitioner as well as lead her evidence. Respondent would be free to cross-examine the appellant or any other witness produced by the appellant.

11. We direct the Family Court to proceed with the trial as expeditiously as possible.
12. The appellant who is present in person assures this court that she will not take adjournment in the matter before the Family Court and will allow the trial to proceed expeditiously without causing any obstruction and would not delay the completion of the proceedings.
13. Parties are directed to appear before the Family Court on 18.02.2019 for further proceedings.
14. With these observations, the appeal is disposed of with no order as to cost.

JYOTI SINGH, J

G.S.SISTANI, J

JANUARY 25, 2019

SSC