

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 121 of 2014

Falindas W/o. Shanker Das, aged about 28 years, R/o. Pandripani, Police Station and Tahsil Narharpur, District North Bastar Kanker (CG) at present Dular Singh Gandharv mines office chowk, near Mama Bhanja Panthela, Dallirajhara, Police Station Dallirajhara, District Durg (C.G.)

---- Appellant

Versus

1. Shankaer Das S/o. Baliram Das, aged about 46 years, (Deputy Ranger) R/o. Village Pandripani (near Umradah Amoda) Police Station and Tahsil Narharpur, District North Bastar Kanker (C.G.)
2. State of Chhattigarh through Collector, North Bastar, Kanker (CG)

---- Respondents

For the Appellant :- Mr. B.P. Singh, Advocate
For the Respondent No.1 :- Mr. D.N. Prajapati, Advocate
For the Respondent No.2 :- Mr. Ravish Verma, Govt. Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board By

Manindra Mohan Shrivastava, J.

19.05.2020

Heard.

1. This appeal is directed against the impugned judgment and decree dated 31.10.2014 passed by the Family Court, Kanker District North Bastar in Miscellaneous Civil Suit No. 01/2013, by which, the

appellant's application under order 9 Rule 13 CPC has been dismissed as barred by limitation.

2. The appellant was married to respondent Shanker Das on 08.12.2013. Later on, respondent/husband filed the application for grant of decree of divorce against the appellant. According to the respondent/husband, despite service of notice, including service of notice through publication, when wife did not appear, the trial Court proceeded *ex-parte* and *ex-parte* judgment and decree was passed in favour of respondent/husband Shanker Das on 20.08.2009.

3. The appellant thereafter, moved an application for setting aside *ex-parte* judgment and decree on 12.05.2010. In the application, it was stated that the appellant came to know regarding *ex-parte* judgment and decree dated 20.08.2009 only on 17.04.2010, when, she received reply to her notice. Thereafter, relevant information relating to the case details were collected and application for certified copy of *ex-parte* judgment and decree was made on 29.04.2010. Certified copy was received on 01.05.2010 and then, application for setting aside *ex-parte* judgment was filed on 12.05.2010. Initially, at the time of filing of the application, application for condonation of delay was not filed but such application was filed on 08.07.2011.

4. The respondent/husband opposed the application for condonation of delay in filing the application by submitting that the appellant had come to know regarding the *ex-parte* judgment and decree even prior to 17.04.2010.

5. After allowing the parties opportunity to lead oral and documentary evidence, learned Family Court arrived at conclusion that the appellant had come to know regarding *ex-parte* judgment and decree prior to the claimed date of knowledge. Considering over all circumstances and that the appellant failed to offer any explanation whatsoever in respect of the period from 08.03.2010 onwards, application for condonation of delay in filing the application for setting aside *ex-parte* decree itself, was rejected with application under order 9 Rule 13 CPC dismissed as barred by the limitation. This order is under challenge in this appeal.

6. Learned counsel for the appellant would argue that the learned family Court, while considering the application for condonation of delay in filing application under Order 9 Rule 13 CPC, has adopted very rigid strict approach ignoring that the appellant/wife has suffered *ex-parte* judgment and decree of divorce. She had come with substantial ground that notices were not served on her through proper mode and proper address where she was actually residing. Further, counsel for the appellant would submit that the court below also did not appreciate that mere receipt of information regarding passing of *ex-parte* judgment could not be made a basis to attribute knowledge on the part of the appellant. He further submits that if pleading and evidence are seen in totality, even if she was informed by one Anita Nagwanshi on 08.03.2010 that the husband had obtained some order, in the circumstances, the learned court below ought to have adopted liberal and practical approach to condone the short period of delay in filing application under order 9 Rule 13 CPC.

7. On the other hand, learned counsel for the respondent, supporting the impugned judgment submits that there is no illegality in the impugned order. He would submit that the entire basis of prayer for condonation of delay in filing application under Order 9 Rule 13 CPC is that the appellant came to know regarding *ex-parte* judgment and decree only on 17.04.2010 and the cause shown to explain delay is only with regard to period from 17.4.2010 to 12.05.2010. However, in the evidence, the appellant admitted that she had even read the *ex-parte* judgment and decree on 08.03.2010 itself. In the absence of any explanation whatsoever offered to show any sufficient cause for not taking any steps from 08.03.2010, the appellant's application was liable to be dismissed and was rightly dismissed.

8. We have heard learned counsel for the parties and perused judgment, pleading and evidence on record.

9. The *ex-parte* judgment and decree dated 20.08.2009 was sought to be set aside by the appellant by moving application under Order 9 Rule 13 CPC which was filed on 12.05.2010. In this application, the appellant claimed to have received knowledge of *ex-parte* judgment and decree on 17.04.2010 when reply to her notice was received. The explanation offered by the appellant, in her pleading and also in affidavit filed under Order 18 Rule 4 CPC is in respect the period from 17.04.2010 to 12.05.2010.

10. However, as we see from the order of the Court below and the cross examination of the appellant herself, in paragraph 18 of her evidence, she has clearly admitted that having come to know that

respondent/husband is going to solemnize another marriage, appellant met with Anita Nagwanshi with whom, respondent Shanker Das was proposing go for engagement. The Appellant further admits in her cross-examination, that on 08.03.2010, when she met Anita Nagwanshi, she was informed that a decree of divorce has been passed in favour of respondent. Not only this, the appellant admits in her cross-examination that Anita Nagwanshi had also shown her copy of the *ex-parte* judgment and decree of divorce. Having so admitted, it is clear from her evidence that the appellant's stand that she had come to know about *ex-parte* judgment and decree for the first time on 17.04.2010, is not correct. On her own admission, she received information regarding *ex-parte* judgment and decree on 08.03.2010. She had also seen the *ex-parte* judgment and decree that means the appellant was required to file application for setting aside the *ex-parte* judgment and decree within one month from date of this order i.e. 08.03.2010. The appeal was filed on 05.05.2010. True, that the entire period from 08.03.2010 to 12.05.2010 is not too long, but in the absence of any explanation whatsoever, from 08.03.2010 to 17.04.2010, in the entire evidence of the appellant, we find ourself unable to condone the delay of that period, even if we adopt most liberal approach. Liberal approach towards condonation of delay means that when a particular cause is shown, the same has to be considered by adopting liberal approach. However, the cause, nevertheless, has to be shown. If no cause is shown, by adopting liberal approach, mechanical condonation of delay is not permissible under the law.

11. We find that even though, the appellant had come to know about the ex-parte judgment and decree on 08.03.2010, she did not take any effective step despite lapse of more than one month. According to her, certified copy of the judgment applied on 09.04.2010. In the meantime, respondent/husband contacted second marriage with Anita Nagwanshi, the second wife and according to appellant, she met Anita Nagwanshi and Anita Nagwanshi was having copy of the *ex-parte* judgment and decree. Obviously, Anita Nagwanshi proceeded to marry with respondent on the basis of the *ex-parte* judgment and decree. Therefore, at this stage, after 10 years, we do not consider present to be a case where we should allow the appeal by condoning the delay cause for which, does not exist, insofar as period from 08.03.2010 to 17.04.2010 is concerned.

12. In the result, appeal fails and is hereby dismissed. Parties to bear their respective costs.

Sd/-

Manindra Mohan Shrivastava
Judge

Sd/-

Vimla Singh Kapoor
Judge