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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 27th July, 2021

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MAT.APP.(F.C.) 68/2021 and CM APPL. Nos. 22399/2021 &
22400/2021

SUSHMA MOURYA

..... Appellant

Through: Mr. Jitendra Kumar Tiwari Adv.
Versus

KULDEEP MOURYA

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

JASMEET SINGH, J (ORAL)

BRIEF FACTS:

- 1) The present appeal has been filed under Section 19 of the Family Courts Act, 1984 seeking to set aside the order dated 20.03.2021 passed by the Principal Judge, Family Court, Dwarka in Misc. Application No. 37 of 2017 (an application under Order IX Rule 13 seeking set aside decree of divorce), Ex-parte Order dated 12.05.2016

& Ex-parte Decree of divorce dated 12.01.2017 passed in HMA No. 661/ 2015 titled “*Kuldeep Mourya vs. Sushma Mourya*”.

- 2) The factual matrix of the case is that, the appellant (wife) and the respondent (husband) got married on 25.11.2013 according to Hindu rites and ceremonies at Village Post -Dadra, MusafirKhana, Amethi, UP. After the marriage the appellant came to the home of the respondent at Village- Majhna, Post-Aliganj, District- Sultanpur, UP. As per the appellant, they lived together for about 5 days after the marriage, where after the respondent went to Delhi where he was working. It has further been stated that the respondent and his family demanded dowry and also threatened and pressurized her.
- 3) After about 6 months of separation, at the insistence of relatives and friends, the parents of the respondent brought the appellant to Delhi where the respondent and appellant started living at Pandey House, J-17, C-1 block, Gali No. 38, Chankya Place, Janakpuri, New Delhi-110059.
- 4) It has further been stated that the appellant behaved like an ideal Indian wife, but despite that she was inflicted with all sorts of emotional and mental torture, such as not being allowed to cook in the kitchen, not being allowed to sleep with the respondent, as well as physical abuse.
- 5) On 01.08.2014, the respondent brought the appellant to his home, and left her there without her consent. Further, allegations have also been

made by the appellant against her father-in-law which are neither relevant nor germane for the purposes of deciding the present appeal.

- 6) Thereafter, there are many instances of the respondent bringing the appellant to Delhi, and to her native place.
- 7) On the night of 24.09.2015, the respondent allegedly forcefully evicted the appellant from his house, and thereafter the appellant has been staying with her parents and surviving on the money given by them for her expenditure. No issue was born out of the wedlock.
- 8) The respondent filed a petition for grant of divorce being HMA No. 661/2015 and an *ex-parte* divorce was granted to the him vide the impugned judgment dated 12.01.2017.
- 9) The appellant filed an application on 19.04.2017 (though stated as 12.04.2017 in the Petition) under Order IX Rule 13 for setting aside the *ex-parte* decree dated 12.01.2017. The said application was dismissed by Principal Judge, South-West District, Family Court, Dwarka on 20.03.2021. It is this order, as well as the *ex-parte* decree of divorce dated 12.01.2017 which are being challenged by the appellant before us. The appellant in the present appeal, also seeks setting aside of the order dated 12.05.2017, on which date the appellant was proceeded *ex-parte*.
- 10) Along with the application under Order XI Rule 13 , the appellant had also filed an application under Section 5 of the Limitation Act seeking

condonation of 59 days delay in filing the application. The delay of 59 days was condoned by the Family Court.

- 11) We have heard the Learned Counsel for the appellant.
- 12) On filing of the petition for dissolution of marriage under 13(1)(ia) of the Hindu Marriage Act, 1955 by the respondent on 28.10.2015, the appellant was served and put in appearance on 21.03.2016. The respondent failed to appear after 21.03.2016, and was proceeded *ex-parte* on 12.05.2016. The respondent led *ex-parte* evidence and, on 12.01.2017, divorce was granted to him.
- 13) The appellant on 19.04.2017, filed the application under Order IX Rule 13 of the Code of Civil Procedure for setting aside the *ex-parte* Decree wherein the material averments are as under.
 - a) That the appellant is a lay woman who does not understand English and is not aware of Court proceedings.
 - b) The appellant could not engage a lawyer due to financial difficulty.
 - c) The appellant was not told the next date of hearing nor was she told to take note of the next date. The appellant was under an assumption that summons would again come to her in case she was required in court by telephone as is the case in the crime against women cell.

d) The father of the appellant was suffering from heart disease and the mother of the appellant was diagnosed with Tuberculosis in her intestine, during this period.

14) The respondent duly filed a reply and has stated :

a) ignorance of law is no excuse.

b) that the appellant is not a lay woman and is a graduate and has been pursuing a computer course in English medium.

15) The appellant has filed a rejoinder to the reply and in paragraphs 7 and 8 has categorically stated as under.

“It is submitted that the applicant wife has studied in Hindi medium school throughout her study period. The medium of the study materials for the computer course was English and there were no other option. The copy of the register annexed by the petitioner was actually and mainly copied by her cousin sister and only very small part of it was only copied by the applicant from the course material offered by the institute.”

16) In order to set aside a decree under Order IX Rule 13, the Court has to be satisfied that :

a) Summons were not duly served, or;

b) Despite service, the person was prevented by sufficient cause from appearing when the suit was called for hearing and, only thereafter can the ex-parte decree be set aside.

17) This Court has observed in ***Sudarshan Sareen v. National Small Industries Corporation Ltd. and Ors.*** (206 (2014) DLT 534) that:

“..... we do not feel that the appellant has been able to show sufficient cause for not appearing in the proceeding. In the present case, the appellant has admitted the service of summons. Admittedly, the appellant was aware of the pendency of the suit and had sufficient time to appear and answer the claim of respondent No. 1. The only reason given by appellant for not appearing in Court is the alleged assurance given by respondent No. 2 that the appellant would be duly represented in the matter. We find that this reason cannot by any stretch constitute a sufficient cause for non-appearance of the appellant. Admittedly, despite being aware of the proceedings, the appellant neither took any pains to ensure that he was represented before the Court nor did he take any efforts to even apprise himself as to the outcome of the proceedings. The appellant has been wilfully negligent and thus, the recourse under Order 9 Rule 13 of CPC is not available to the appellant.”

18) Further it was laid down by the Supreme Court in ***Parimal v. Veena*** (2011) 3 SCC 545 that:

“In order to determine the application under Order IX, Rule 13 CPC, the test has to be applied is whether the defendant honestly and sincerely intended to remain present when the suit was called on for hearing and did his best to do so. Sufficient cause is thus the cause for which the defendant could not be blamed for his absence. Therefore, the applicant must approach the court with a reasonable defence. Sufficient cause is a question of fact and the court has to exercise its discretion in the varied and special circumstances in the case at hand. There cannot be a strait-jacket formula of universal application.”

- 19) In the present case, there is no dispute before us that the summons were duly served on the appellant, and she appeared before the Family Court on 21.03.2016. The only question that now remains for our adjudication is whether the appellant was prevented by sufficient cause from appearing on 12.05.2016, and thereafter. The averment of the appellant that she is a lay woman and does not understand English is falsified by her own rejoinder, wherein she admits having made notes for her computer course in English. Even though the appellant states that only a small part was copied by the appellant, nevertheless, it shows that the appellant was conversant with English language.
- 20) It is further clear from the rejoinder that the appellant has definitely been to school and has also pursued computer course in English language, which clearly shows that she is not an uneducated or unaware person.

- 21) In this view of the matter, the basic degree of awareness would require a person to find out the status of proceedings against him/her. The appellant has not shown, having taken any efforts to apprise herself of the status/outcome of the proceeding. There has been a period of almost 7 months between the time when the appellant was proceeded *ex-parte* (i.e 12.05.2016), and the *ex-parte* decree (i.e 12.01.2017).
- 22) It will not suffice to say that the appellant was under a mis-conception that for every date of hearing, she would be called by the Court through telephone. The said reasons do not inspire our confidence.
- 23) A bare perusal of the facts stated above shows callousness, nonchalance and indifference on the part of the appellant.
- 24) We have gone through the *ex-parte* judgment and decree of divorce. The same is premised on the unchallenged and unrebutted case set up by the respondent. The case established by the respondent before the Family Court is as follows:-
- (i) The appellant wife had made derogatory remarks about the Respondent's body and commented that he would not be able to meet her physical demands. She also criticized his clothing and said that he was not a man of her liking. The Appellant had refused to make physical relations with the Respondents, since December, 2014.
- (ii) The Appellant regularly taunted the Respondent about his profession and low income in front of other people and his family members alike. She also habitually doubted his character.

- (iii) The Appellant was often aggressive toward the Respondent, and threw utensils while hurling abuses at him.
- (iv) The appellants behaviour towards the Respondent's family was also improper. She often picked up fights and willingly embarrassed the family members. The family court had also taken in account the events that had transpired on 25.09.2015 where the Appellant had refused to go the house of the Respondent to visit his ailing mother, and while he was getting ready for the journey she had locked him and ran away from the matrimonial home around 4:00 A.M in the morning, taking away some cash and the Respondent's Mobile phone.
- (v) The attitude, conduct and behaviour of the appellant was found to be that of an irrational and irresponsible wife. She did not treat the Respondent, nor his family, with respect. Even after the respondent tried his level best to make his matrimonial life workable, no efforts for the same were made by the appellant making the marriage nonworkable.
- 25) The aforesaid instances clearly constitute cruelty by the appellant upon the respondent. Then, the impugned *ex-parte* judgement does not call for interference. Accordingly, the appeal is dismissed.

JASMEET SINGH, J

VIPIN SANGHI, J

JULY 27, 2021/dm