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

Judgment reserved on: 14.03.2022

Judgment delivered on: 04.07.2022

+ **MAT. APP. (F.C.) 125/2019 & CM APPL. 19974/2019**

NITIN GUPTA

..... Appellant

Through: Mr. Aayush Agarwala, Adv.

versus

RUCHIKA GUPTA

..... Respondent

Through: Respondent in-person

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

JASMEET SINGH, J

CM APPL. 19974/2019/ CONDONATION OF DELAY

1. The appellant has filed this application seeking condonation of 405 days in filing the appeal. It is submitted by the appellant that the appeal was required to be filed by 28.12.2017 but the appellant was in Judicial Custody from September 2016 up till August 2018 (almost a period of 23 months) for being unable to pay the maintenance awarded to the Respondent-wife in proceedings under the Domestic Violence Act. Thereafter, he was undergoing medical treatment to recover from ill health, and also took time to re-construct the entire Trial Court record. It is for these reasons that the appellant was unable to pursue his matters properly. No other explanation is provided for



the delay.

2. A bare perusal of the medical records shows that the ailment referred to by the appellant pertains to dental problems and thus was not of such a nature which would have prevented the appellant from pursuing his legal remedies. The appellant was also released from custody from 17.08.2018 till 08.10.2018 i.e., for 53 days, vide order dated 16.08.2018 of Ms. Neera Bhairoke, Ld. ASJ, Saket District Court, Delhi. On 24.09.2018, the applicant/appellant was again released as his sentence was suspended by the Hon'ble High Court of Punjab and Haryana, Chandigarh. The appellant/applicant was on bail from 24.10.2018 till 06.02.2019 i.e., 105 days. However, the appellant/applicant filed his appeal in the Hon'ble High Court of Delhi on 06.02.2019.
3. In light of the above-stated facts, we find that the appellant has failed to explain the delay in clear and unequivocal manner. The medical record and the judicial custody of the appellant do not satisfy the court in explaining the delay in filing the appeal and therefore, we do not find any reason to condone the delay.
4. Even though the order of not condoning the delay would be enough to dismiss the appeal, we also proceed to dispose of the appeal on the merits.

MAT. APP. (F.C.) 125/2019

5. The present appeal has been filed by the appellant seeking setting aside of the order dated 28.11.2017 passed by learned Addition Principal Judge, Family Court, West Tis Hazari Court, New Delhi in HMA No. 336/2014 titled "*Ruchika Gupta vs. Nitin Gupta*"



6. It will be relevant to note down the list of dates for the disposal of the present appeal.

	Date	Events
1.	16.01.2005	The Appellant and the Respondent got married at New Delhi.
2.	25.10.2005	The Appellant and the Respondent had a son who was named Honnish Gupta.
3.	26.07.2008	The Respondent filed a petition seeking divorce from the Appellant on the ground of cruelty and desertion.
4.	14.07.2014	The matter was listed for recording the evidence of the Respondent when, on account of pending mediation proceedings, it was listed on 03.12.2014.
5.	03.12.2014	The matter was listed for evidence when Appellant failed to appear. As a result, his evidence was closed and the matter was listed for final arguments on 23.01.2015.
6.	23.01.2015	The final arguments in the matter were heard from the Respondent and the case was put up for orders for 07.03.2015.
7.	07.03.2015	The judgment was pronounced by the Family Court, Tis Hazari and divorce was granted on the ground of cruelty since the evidence led by the Appellant and his father was not read as part of the record.

7. On 18.04.2015, the appellant preferred a Misc. application in HMA No.336/14 under Order IX rule 13 of the Code of Civil Procedure (in short 'CPC') for setting aside ex-parte judgment passed dated 07.03.2015. The Additional Principal Judge, Family Court vide the impugned order was pleased to dismiss this application on the ground that the appellant had neither been able to show any justifiable reasons for his non-appearance nor been able to provide any reasons



for the absence of his main counsel or the proxy counsel. The appellant also failed to pay the balance costs of Rs. 3,000, imposed earlier, to the Respondent-wife.

8. It is submitted by learned counsel for the appellant that the Family Court had erred in dismissing the application moved by the appellant under Order IX Rule 13 on the ground that the appellant failed to satisfactorily explain his failure to appear on the date of his Court hearing. The ld. counsel submitted that the appellant was unwell on the date of hearing and has filed his medical history in this regard. He has also submitted that the reason for the absence of his erstwhile counsel was also clarified before the family court.
9. The appellant further submitted that on 03.12.2014, the appellant's opportunity to lead evidence was closed by the Trial Court when the Appellant failed to appear. The decree of divorce was passed against the Appellant on the grounds of cruelty primarily because the appellant's evidence was non-conclusive and hence the same could not be read while the respondent's evidence went unrebutted. As a result, the appellant could not lead any evidence against the respondent and an ex-parte decree was passed holding the appellant guilty of cruelty.
10. On merits it is submitted by the appellant that he did not wish to contest the decree of divorce but is only aggrieved by the ex-parte finding of cruelty rendered against him as it will prejudice his defence in other pending proceedings between the parties.
11. On the other hand, the respondent, who appeared in person, submits that the Appellant is only concerned with dragging this case and



harassing the Respondent. It is also submitted that the medical history of the Appellant makes it clear that he is only suffering from tooth decay and teeth-related problems and even his MRI, which was conducted regarding his alleged L3/L4 compression, shows that the appellant had no abnormality in his spine.

12. As regards the delay in filing of this appeal, the respondent has submitted that the appellant was legally entitled to file the appeal till 27.12.2017. It is submitted that he was in Judicial Custody from September, 2016 till 16th August, 2018. However, it is stated that from 17.08.2018 till 08.10.2018 i.e., for 53 days, the appellant/applicant was released from Custody vide order dt 16.08.2018 of Ms. Neera Bhairoke, Ld. ASJ, Saket District Court, Delhi. Thereafter, the appellant/applicant was again in Judicial Custody from 09.10.2018 till 23.10.2018 as he had been convicted under section 420 IPC by the Hon'ble Session Courts in Faridabad. Thereafter, the appellant/applicant was enjoying the liberty of bail from 24.10.2018 till 06.02.2019 i.e., 105 days.
13. The respondent vehemently opposes the appeal filed by the appellant. She even opposes the request of the appellant to convert the divorce decree granted on the ground of cruelty to a divorce decree by mutual consent.
14. We have heard Mr. Aggarwal, learned counsel for the appellant and the respondent who appears in person. The application filed by the appellant under Order IX Rule 13 of the CPC was dismissed on the ground that neither the appellant nor his counsel has been able to place any record for the apparent illness of the appellant or the



counsel being outstation.

“The applicant has not placed on record/ any document to show that he was unwell on the date fixed before this Hon'ble Court nor his counsel has placed on record any documentary evidence to show her being outstation. Even if, the main counsel was not available the proxy counsel could have been present as was the position on 24.07.2014. No reason has been given as to why the respondent or his counsel did not appear on 03.12.2014. The applicant did not pay the balance cost of Rs.3,000/- to the non-applicant/petitioner and on account of his conduct I do not find any justification to allow the application. As such the application under Order 9 Rule 13 CPC filed by the respondent is dismissed.”

15. To deal with the submissions made by the counsel for the appellant, it would be necessary to peruse the application dated 18.04.2015 filed by the appellant under Order IX Rule 13 of CPC for setting aside the ex-parte judgment dated 07.03.2015. The only reason for non-appearance in the application under Order IX Rule 13 of CPC has been enumerated in para 2 & 3 which read as under:

*“2. That - on 23.01.2015 the counsel for the respondent was not in Delhi due to family Function and when the counsel came in Delhi inquired about the case to the respondent, the respondent told to the' counsel that he was not well, and due to this, reason he could not appear in the court not aware the date of the case.
3. That the counsel inadvertently could not note down the next date -of hearing and when in another case on 07.03.2015 the proxv counsel of the counsel was present in the case he told to the counsel that the case is listed for -today and due to in another court the counsel could not appear, in the court”*

16. Under Order IX Rule 13 the applicant has to satisfy the Court of sufficient and cogent reasons for not being able to attend the hearing of the suit on the relevant date. In the present case, the appellant has



asserted that on 23.01.2015 his counsel was not in Delhi due to a family function and the appellant was unwell and thus could not appear before the court and was not aware of the court date. It is also averred that his counsel inadvertently could not note down the next date. However, the evidence produced by the appellant/respondent does not establish such a case. The medical history produced by the appellant to support his contention that he was unwell on 23.01.2015 only states that the appellant was suffering from problems relating to his teeth and are mostly of the year 2018/2017. The MRI report dated 27.07.2017 also shows no significant abnormalities which would have required medical intervention to an extent that required the appellant to miss the court hearing.

17. It is also pertinent to note the conduct of the Appellant before the trial court, his averments and supporting documents. It seems to us that the Appellant is intentionally trying to delay the disposal of the case. He has been proceeded ex-parte three times before the trial court. The evidence of the Appellant (respondent before the Trial court), was closed after making observations about the conduct of the Appellant before the Ld Trial Court. The Appellant was again proceeded Ex-parte by Shri R.B. Singh Ld ADJ-01 (west)/ Delhi, on 06.09.2013 and on 03.12.2014, the Appellant, for the third time, was proceeded ex-parte. From the aforesaid, it is clear, that the appellant has not only failed to show sufficient and cogent reasons for not being able to attend the hearing of the suit on the relevant date, what is more is that the appellant also appears to have time and again deliberately avoided appearing before the Court. It is also clear that adequate indulgence



has been shown to him by the trial court. Furthermore, the appellant has not been able to explain his non-appearance on the date of hearing on 03.12.2014 or 23.01.2015.

18. As regards the absence of the erstwhile counsel for the appellant before the trial court on the date of hearing, it is submitted that it was on account of being outstation. However, again we must stress that no documentary proof has been provided in this regard. The appellant has failed to provide any reason as to why the counsel maintained such a callous and lackadaisical attitude in inspecting the record and finding out the next date of hearing. Once more, it is also not clear as to why no one appeared on 03.12.2014.
19. From the reasons provided above, it is certain that there are lacunae in the explanations provided by the appellant. What appears to us is that these are merely flimsy excuses and tactics employed by the appellant to avoid appearing before the court and to drag the proceedings further. In our opinion, such reasoning does not satisfy the bar of being sufficient and cogent.
20. It is also relevant to note that the appellant has repeatedly disregarded the orders of the court regarding costs imposed. Where on 16.04.2014, the Family court had recalled the order dated 06.09.2013 subject to a cost of Rs.5,000/- to be paid in three instalments during RE stage, only the first instalment was paid by the appellant. Likewise, the appellant did not pay the Interim Maintenance to the Respondent Ruchika Gupta and her Minor Son, which amounts to Rs 11,25,000/- as on date of filing of reply. Lastly, there is also non-compliance of Crl. M.C. No.430/2020, concerning payment of the



school fees of their son, wherein the appellant has stated that he would not be able to comply with this order. Notwithstanding the above, no explanation by the appellant is given for adopting a cavalier attitude towards the proceeding and showing scant regard to the orders of this court. In view of the above, the appellant is not entitled to any indulgence.

21. On account of his conduct, we find that there is no infirmity in the view taken by the Family Court. The appeal is devoid of merit. Accordingly, the same is dismissed.

JASMEET SINGH, J

RAJIV SHAKDHER, J

JULY 04, 2022/ 'dm'

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