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

% *Date of decision: August 23, 2023*
 + **MAT.APP.(F.C.) 22/2019, CM APPL. 3453/2019 & CM APPL. 33569/2022**

MOHINDERJEET KAUR Appellant
 Through: Mr. Gaurav Puri, Mr. Sarthak Gupta
 and Mr. Saksham Thareja, Advocates.
 versus

ARVIND JASSI @ ARVIND KUMAR JASSI Respondent
 Through:

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. CM Appl. 3453/2019 under Section 5 read with Section 14 of the Limitation Act, 1963 has been filed by the appellant seeking condonation of delay of 4133 days in filing the appeal under Section 19 of the Family Courts Act, 1984 read with Section 28 of the Hindu Marriage Act, 1955 for setting aside the Order and Judgment dated 28.05.2007 vide which the learned Additional District Judge has allowed the divorce by mutual consent under Section 13(B)(2) of the Hindu marriage Act, 1955 (in short, the 'HMA').
2. It is submitted in the application that the divorce by mutual consent under Section 13(B)(2) of the HMA was granted by the learned Additional District Judge vide Order and Decree dated 28.05.2007. It is claimed that the Decree of divorce was obtained by making the appellant believe that the



said proceedings were necessary for the appellant to be able to visit and reside in Italy with the respondent. Believing the representation to be true and without the knowledge of the proceedings, she participated in the proceedings for divorce by Mutual Consent.

3. Subsequently, she came to know that a fraud has been committed upon her. She contacted her lawyer who filed an application for annulment of marriage before the same Court of learned Additional District judge. She left the matter to be pursued by her counsel but he was unable to pursue it since he suffered from brain haemorrhage. The appellant was not aware of his medical condition till she enquired about the matter in November, 2018 and came to know that her counsel was bed-ridden. Upon further enquiry, she was informed that the application of the appellant has been dismissed in default. She obtained the certified copy of the order of dismissal.

4. It is claimed that there is a delay of 4133 days in filing the present appeal for the reasons stated above. Prayer is therefore made that the delay in filing the appeal may be condoned and the impugned Order dated 28.05.2007 granting divorce by mutual consent be set aside.

5. **The respondent in his reply** to the application has observed that the appellant has not approached the Court with clean hands and has suppressed material facts. The application i.e. CM Appl.3453/2019 for condonation of delay is not maintainable as the appellant had voluntarily, in sound mind, given the statement on oath before the Court of learned Additional District Judge for grant of divorce and stated that the consent of the appellant was not obtained by any 'force', 'fraud' or 'undue influence'. In fact, the joint application under Section 151 CPC has also been filed to seek waiver of statutory period of six months which was allowed and thereafter, the



statements of the parties were recorded. It is claimed by the respondent that in fact, the appellant intends to harass the respondent and she in connivance with both the daughters who are now major, want to usurp the property bearing No. 1408/13, Second Floor, Govindpuri, Kalkaji, New Delhi which is the only property that the respondent owns.

6. It is also stated that the appellant had filed Civil Suit bearing No.77/18 for Permanent Injunction praying to restrain the respondent from disturbing their peaceful possession on the suit property but the Suit was dismissed vide Order 31.01.2018. Thereafter, she took frivolous action by filing a petition under Protection of Women from Domestic Violence Act, 2005 and by concealing material facts was able to get an *ex-parte* stay on the suit property, even though the same relief has been denied by the learned Civil Judge. The appellant by suppression of facts sought the same relief from the learned M.M. The learned M.M. noted that the appellant took the interim stay by the concealment of fact of divorce between the parties and thereby, vacated the *ex-parte* stay Order vide Order dated 13.04.2018. The petition under Domestic Violence Act was also dismissed vide Order dated 20.12.2018.

7. The respondent on the other hand, has also filed a criminal complaint under Section 156(3) read with Section 200 CrPC against the appellant for having committed criminal trespass as she has forcibly entered into the property of the respondent while he was working in Italy. The said complaint is pending trial before the learned M.M., South-East, Saket Courts.

8. The respondent has claimed that the statements of the parties were recorded on oath by the learned Additional District Judge in the divorce



proceedings and the appellant is estopped from reprobation of those statements under Section 115 of the Indian Evidence Act. The respondent has asserted that the Order granting Decree of divorce was pronounced on 28.05.2007 and was firstly challenged by the appellant before the same Court on 16.02.2010 by filing an application but the said application got dismissed in default on 23.02.2011. It is asserted that though the appellant is claiming to have gained the knowledge of said dismissal in November, 2018, but it clearly reflects that she has failed to exercise due diligence in the matter. Pertinently, there are no documents whatsoever placed on record to justify the delay. It is stated that there is no ground for condonation of delay of 4133 days in filing the appeal and the appeal is liable to be dismissed.

9. Submissions heard.

10. **The first aspect** which needs consideration is that the Order dated 28.05.2007 is the Order granting Divorce by Mutual Consent under Section 13(B)(2) of the HMA. The parties have given the statements not once but twice before the Courts for accepting that they were willing for divorce by mutual consent. The appellant as per her own submissions, was aware of the nature of proceedings since she has claimed that she agreed for divorce as she was told that it would be necessary for her to get her residence in Italy where her husband was already residing. The submissions of the appellant herself show that she knew the nature of the proceedings when she made the statements and the divorce was granted. No case of fraud is *prima facie* made out. Moreover, there is no appeal against the Decree by mutual consent.

11. Furthermore, there is no ground whatsoever what to say of sufficient



ground, explained by the appellant. As per her own submissions, she was aware of divorce proceedings which she attempted to get set aside in 2010 by moving an application before the learned ADJ. The same got dismissed in 2011 and no action thereafter was taken by her to challenge the Decree of divorce by Mutual Consent till the filing of the present appeal in December, 2018 and which came up for hearing for the first time on 25.01.2019. The ground given is that the appellant had trusted her counsel who was unable to pursue the matter because of his having suffered brain haemorrhage. It is difficult to comprehend that a person who has chosen to challenge a Decree of the Court would not enquire about it for 7 long years. Clearly, her slumber of more than 11 years in challenging the Consent Decree by way of the present Appeal is only an endeavour by her to unsettle the matter which has already met its closure. There is no cogent explanation given for condonation of delay of 4133 days in filing the present appeal.

12. We, therefore, dismiss the application being CM Appl. 3453/2019 for condonation of delay in filing the appeal. Consequently, we also dismiss the appeal under Section 19 of the Family Courts Act, 1984 read with Section 28 of the HMA.

13. The pending applications, if any, are also disposed of accordingly.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 23, 2023/akb