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

% ***Date of decision: 12th October, 2023***

+ **MAT. APP.(F.C.) 56/2022, CM APPLs.21197/2022, 21198/2022**

SEEMA SABHARWAL

..... Appellant

Through: Mr. Ankit Goel, Advocate along with
appellant in person.

versus

KAMAL SABHARWAL

..... Respondent

Through: Mr. Gandharv Anand, Advocate with
respondent in person.

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. An Appeal under Section 19 of the Family Courts Act, 1984 has been preferred against the Order dated 10.03.2022 whereby the learned Judge, Family Court dismissed the application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC"*) filed by the appellant to set aside the ex-parte judgment and decree dated 03.03.2020, granting divorce to the respondent.

2. The divorce was granted to the respondent/ husband vide ex-parte judgment and decree dated 03.03.2020. The appellant/ wife preferred an application under Order IX Rule 13 CPC to set aside the *ex-parte* judgment wherein it was submitted that pursuant to marital discord a petition for divorce was filed by the respondent/ husband in the year 2011. She had engaged her counsel on the recommendation of friend of her father in whom



she had implicit faith. Eventually, the evidence of the petitioner was concluded on 30.04.2019 and the matter was adjourned for the evidence of the appellant/ wife. The appellant had not been appearing in the Court on the assurance of her counsel that her presence was not required and that he would inform her whenever her presence was required. Consequently, having faith and trust in her Counsel, she did not appear. In March, 2020, she received a call from her Advocate pursuing her litigation before Punjab & Haryana High Court under Section 498-A IPC and sought the copies of the Orders in the Divorce Petition. She then contacted her Advocate in this case who was not very forthcoming in telling the date. She along with her brother, then went to meet him on 07.03.2020 and came to know that an ex-parte judgment has already been passed on 03.03.2020. She then got her application under Section 151 CPC drafted and also got her affidavit of evidence prepared. The matter was listed on 07.04.2020 for 13.04.2020.

3. The appellant claimed that it was her previous counsel who was negligent and who was not diligent in performing his duty and had misled and deceived the appellant. He acted in betrayal of fiduciary trust and exploited the appellant for the reasons best known to him. She, therefore, sought setting aside of the ex-parte judgment dated 03.03.2020.

4. The learned Judge, Family Court in his impugned Order, dismissed the application under Order IX Rule 13 CPC by observing that there had been no appearance on behalf of the appellant on 22.11.2019, 14.02.2020, 26.02.2020, 02.03.2020 and finally on 03.03.2020. No cogent explanation for non-appearance had been given by the appellant. In regard to her explanation of the Advocate not having been diligent, it was observed that this cannot be taken as a ground for non-appearance of the party who is



equally liable to face the consequences when he or she fails to appear without any just and sufficient cause, by putting the blame solely on the Advocate.

5. Aggrieved by the dismissal of her application under Order IX Rule 13 CPC, the present appeal has been preferred.

6. **Submissions heard.**

7. The petition for divorce had been filed in the year 2011 and the counsel for the appellant had been appearing regularly and duly cross-examined the respondent/ husband on 30.04.2019 on which date the evidence of the respondent was closed and the matter was adjourned for listing of the evidence of the appellant/ wife. Admittedly, neither any affidavit of evidence was filed nor the appellant/ wife or her counsel appeared and she was proceeded ex-parte on 22.11.2019. Eventually, the ex-parte divorce was granted vide judgment dated 03.03.2020.

8. There are admittedly, multiple litigations pending in various Courts including Faridabad and High Court of Punjab & Haryana. She had her Advocates pursuing her litigations. The appellant has explained that she needed the copies of the Order sheets to be filed in the proceedings before Punjab & Haryana High Court relating to 498-A IPC. She contacted her Advocate in this case who was not very forthcoming. She met him on 07.03.2020 on which date her affidavit of evidence along with application was prepared and filed in the Court and the same was put up for 13.04.2020.

9. As per the appellant herself, she had stopped appearing in the Court since March, 2017. Despite there being multifarious litigations pending, she chose not to keep a track of the proceedings in this divorce petition. She cannot explain her own indifference by blaming it on her Advocate. Even if



for the sake of arguments it is presumed that the Advocate was not keeping her informed, she herself had an obligation to act with due diligence and at least keep a track of the proceedings and the dates. Three years of slumber of the appellant/ wife cannot be comprehended by accepting her much clichéd explanation of putting the blame on the Advocate. Had the matter been diligently pursued by the appellant and she had not gone into hibernation, there would have been no reason for the Advocate to have not appeared.

10. We find that the conclusion of the learned Judge, Family Court dismissing the application under Order IX Rule 13 CPC of the appellant is well justified.

11. The appeal is, therefore, dismissed along with its pending applications.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 12, 2023

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