

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

FAT 98 of 2025
IA No: CAN 1 of 2025
CAN 2 of 2025
CAN 3 of 2025
CAN 4 of 2025

Smt. Roshni Saha
Vs.
Sri Mainack Saha

For the appellant : Mr. Debjit Mukherjee,
Mr. Akash Dutta

For the respondent : Mr. Srijib Chakraborty,
Mr. Subhasis Chakraborty,
Mr. Amit Chowdhury,
Ms. Sushmita Kumari Singh,
Mr. Aditya Mondal

Heard on : 01.07.2025

Judgment on : 01.07.2025

Sabyasachi Bhattacharyya, J.:-

1. The present appeal, against an ex parte divorce decree obtained by the respondent/husband against the appellant/wife has been preferred after a delay of about 269 days from the expiry of the statutory limitation period.

2. CAN 1 of 2025 has been filed for condonation of delay in preferring the appeal, whereas CAN 3 of 2025 is an application for amendment of the pleadings made in the condonation application.
3. Upon hearing learned counsel for the parties and going through the pleadings, including the affidavits in opposition and reply filed to the applications, we find that the reason furnished by the appellant/wife for the delay was initially that she had gone to the Court of the ACJM, Barrackpore on January 09, 2025, when the respondent/husband was released on bail, and during the course of such hearing, the petitioner came to know of the existence of the impugned judgment and decree. Subsequently, during hearing of the condonation application by this Court on a prior date, the wife was confronted with the order granting bail to the husband, from which it was evident that the wife and/or any Advocate on her behalf was not present in the criminal court when bail was granted to the respondent/husband.
4. This, admittedly, prompted the wife to file an amendment application to the condonation of delay application. In the amendment application, the appellant/wife admits that during the course of hearing before this Court, when confronted with the bail order, it was discovered that the pleading made in the application for condonation was erroneous. The wife, in CAN 3 of 2025, seeks an amendment to the pleadings in paragraph no. 5 of the original condonation application to the effect that the respondent/husband had surrendered before the ACJM, Barrackpore on 9.1.2025 and was

released on bail and that during the course of “such criminal proceedings before the police authorities”, the appellant/wife first came to know of the existence of the impugned judgment and *ex parte* decree of divorce.

5. The amendment application, even if allowed, would give rise to an absurd proposition. It is an admitted position, as also evident from the annexures to the pleadings, that bail was granted to the respondent by the ACJM, Barrackpore in court premises on January 09, 2025. As such, there could not have been any occasion for the wife to become aware of the divorce decree in any “criminal proceedings before police authorities”.
6. In fact, it is unheard of that any “criminal proceeding” is conducted before the Police.
7. The appellant/wife also seeks to project before the Court that she was called by the Nimta Police Station for inquiry on the basis of a complaint lodged by her against her husband on January 08, 2025, when she came to know of the divorce decree.
8. However, it is completely unexplained as to how the police authorities became aware of the divorce decree obtained by the husband *ex parte*, where the wife herself pleads that she did not have any knowledge of the same.

9. The respondent/husband also relies on a criminal complaint lodged by the appellant/wife by way of an application under Section 175(3) of the BNSS before the learned Additional Chief Judicial Magistrate, Barrackpore on December 26, 2024, eleven days after the husband contracted a remarriage upon obtaining the divorce decree and waiting for expiry of the statutory appeal period. The said remarriage was contracted on December 15, 2024 and the husband left with his second wife, as per his averment in the opposition to the condonation application, for honeymoon to Rajasthan on December 22, 2024.
10. It is too much of a coincidence that only four days thereafter, after waiting for about a year, the wife lodged a complaint, wherein she alleged that on August 26, 2023, that is, one year back, brutal assault was inflicted on her by the respondent/husband.
11. It remains further unexplained as to what prevented the wife from lodging such complaint throughout the period of one year before the husband contracted remarriage and left for honeymoon with his second wife.
12. As such, the timing of the complaint by the wife is clearly *prima facie* evidence of the *mala fides* behind the complaint.
13. Also, even if we allow the amendment to the condonation of delay application, we do not find that substantive reason for the delay has been made out. Even going by the amendment application, no credible story has been made out by the wife, since there could not

have been any occasion to know from the police authorities on a day which was fixed for the hearing before the ACJM Court in respect of the wife's complaint against the husband, on which date the husband had gone with his family to surrender before the court and obtained a bail.

14. Since neither the wife nor her Advocate had any occasion to have prior notice of such surrender and bail and since the wife was not represented or herself present before the court, the explanation given in the condonation application, even if amended, is not sufficient to attribute knowledge to the wife for the first time regarding the *ex parte* divorce decree on January 09, 2025.
15. Even otherwise, since the learned Trial Judge passed an *ex parte* decree on the specific finding that the bailiff had gone to serve the wife the summons at the correct address of the wife and, upon the appellant/wife having refused to accept the same, had affixed the same to the door of the premises, we attach the presumption of correctness which goes with official and judicial acts and in the absence of any solid rebuttal thereto, we are of the opinion that there is no occasion for us to disbelieve such finding of the court.
16. The appellant/wife has sought to rely on certain purported e-mails sent by her ex-employer indicating that she had attended office on the date when the summons was sought to be served.

17. However, in the absence of any corroborative evidence, we are unable to accept such printouts of purported e-mails by an unknown entity who is being claimed to have been the employer of the wife for the first time before this Court. For rebutting the presumption of correctness attached to the orders of the learned Trial Judge, something on a higher pedestal had to be produced before this Court.
18. Thus, upon a comprehensive assessment of the facts surrounding the case, we find that no plausible explanation for the delay has been made out.
19. We must mention here that the appellant has relied on *Collector, Land Acquisition, Anantnag and another vs. Mst. Katiji and others*, reported at (1987) 2 SCC 107, for the proposition that the Court has to take into consideration the merits of the appeal while adjudicating an application for condonation of delay. However, learned counsel for the respondent cites a subsequent judgment of *State of Madhya Pradesh vs. Ramkumar Choudhary*, reported at 2024 SCC OnLine SC 3612, where, upon considering of all the previous landmark judgments on the issue, the Hon'ble Supreme Court categorically observed that the merits of the appeal cannot be a valid consideration at the time of deciding a condonation application. That apart, we also do not find any solid reason to hold that such a strong case has been made out in the appeal that we should condone the delay on such ground alone.

20. Moreover, we also take note of the fact that the respondent/husband has already contracted a second marriage after waiting for the statutory appeal period post-divorce decree and in the event the present application is entertained, several lives would be destroyed without any fault on their part.
21. Accordingly, CAN 1 of 2025, as well as CAN 3 of 2025, are dismissed on contest without any order as to costs.
22. Consequentially, FAT 98 of 2025 is dismissed as time-barred. Accordingly, CAN 2 of 2025 as well as CAN 4 of 2025 stand dismissed as well.
23. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)