

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 339 of 2024
With
CAN 1 of 2024

Mrs. Rupashree Majumder
Vs.
Mr. Sandipan Sarkar

For the appellant : Ms. Riya Banerjee
For the respondents : Mr. Tanmoy Mukherjee,
Mr. Arkadipta Sengupta,
Ms. Amrita Maji.
Heard on : 02.04.2025
Judgment on : 02.04.2025

Sabyasachi Bhattacharyya, J.:-

1. The present application has been filed for condonation of delay of about 563 days in preferring the appeal. The appeal has been preferred by the defendant/wife against a decree of divorce obtained by the plaintiff/respondent/husband.

2. Learned Counsel for the appellant submits that although the appellant is a resident of Delhi and has been a resident of Delhi during the relevant period, substituted service of summons was effected purportedly by circulation in a Bengali newspaper which does not have any circulation as such in Delhi.
3. Thus, it is submitted that proper service was not effected at all on the appellant and she was left in the lurch, since there was regular communication between the parties even after the decree and there was no occasion for the appellant to suspect that a divorce decree had been obtained surreptitiously behind her back by the respondent.
4. Learned Counsel appearing for the respondent/husband submits that the appellant/wife was well aware of the pendency of the suit and the decree. In fact, it is pointed out that the address of the appellant given in the present appeal, that is, the memorandum of the appeal and the connected application, comes within the jurisdiction of the trial court. It is the said address at which summons were sought to be served. As such, it is contended that the present application is mala fide.
5. It is further submitted by the respondent that after waiting for about a year from the passing of the divorce decree, only on February 26, 2024 the respondent has remarried and as such, the lives of the respondent and his second wife would be

jeopardized in the event the appeal is permitted to be registered upon condonation of the delay.

6. There are several aspects of the matter which we are required to consider since, at the end of the day, it is an equitable remedy which is sought to be invoked by the appellant/wife in the application for condonation of delay. What is to be considered is whether the appellant was reasonably diligent in looking after the appeal.
7. The first aspect of the matter which catches our eye is that the only explanation regarding the appellant/wife having coming to know of the ex parte decree is found in paragraph 2 of the application, which is merely that “suddenly, on September 21, 2024, the petitioner to know that her husband had obtained the ex parte decree on December 23, 2022”. The source of such knowledge is, as stated in paragraph 2, merely “reliable sources” without elaborating as to what is the exact nature of such source, which casts a doubt on the said averment.
8. Learned Counsel for the appellant, during her arguments, submits that it was common friends of the parties from whom the appellant/wife came to know of the divorce decree. However, if the common friends had informed the appellant/wife of the ex parte decree, we do not find any reason as to why the said information was not given within reasonable time from the said decree or at the time of passing of the decree. In fact, we find

that proper explanation as to the knowledge of the wife is completely missing from the application. Furthermore, the address of the wife as disclosed in the present appeal is that at which summons was served in the court below.

- 9.** There is nothing on record to show that the wife had left such permanent address at any point of time.
- 10.** As regards the averment as to the appellant being posted at Delhi, South Campus, SBI Branch at the relevant period, we find lack of any proof in that regard, sufficient to show that the wife had no communication with her permanent address and/or never came to her permanent address, as disclosed in the cause title of the present appeal, during the relevant period.
- 11.** Moreover, an important consideration here is that the respondent/husband, after waiting for about a year beyond the statutory period, remarried.
- 12.** In the event the delay is condoned at this belated juncture, valuable rights accrued in favour of not only the respondent but his second wife and their lives would be jeopardized.
- 13.** Taking into consideration all the above aspects, we are of the opinion that the present application is not bona fide and we do not find sufficient explanation for the prolonged delay of about 563 days in preferring the appeal.
- 14.** Accordingly, CAN 1 of 2024 is dismissed on contest without any order as to costs.

- 15.** Consequentially, FAT 339 of 2024 is dismissed as time-barred.
- 16.** No order as to costs.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)

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SSS