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MANDIRA MILIND
SALGAONKAR

Digitally signed by MANDIRA
SALGAONKAR
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO.12273 OF 2025
IN
FAMILY COURT APPEAL (ST) NO.21549 OF 2025

Lalita Dinesh Singh .. Applicant
Versus
Dinesh Singh .. Respondent

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Mr.Pranav Narsaria with Mr.Vipul Makwana for the Applicant.
Mr.Abhijeet Sarwate for the Respondent.

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATE : 10th APRIL, 2026

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ORDER (Per Bharati Dangre, J.) :-

1. Interim Application No.12273 of 2025 filed by the Applicant-wife raise challenge to the two orders; the first being ex-parte divorce decree granted on 11/04/2018 by the Family Court at Pune in Petition A.No.1287 of 2017 filed by the husband and the second being the Judgment/Order dated 01/02/2025, dismissing the application filed under Order IX Rule 13 of the Code of Civil Procedure, 1908 (for short, “CPC”)

In raising a challenge to the aforesaid two orders, there is a delay of 2544 days and 4 days respectively. It is for condonation of this delay, the present Application is filed by the Applicant.

2. We have heard the learned counsel Mr.Narsaria for the Applicant and the learned counsel Mr.Sarwate for the Respondent, who has vehemently opposed the Application by filing an affidavit-in-reply, which is taken on record.

The clear facts before us would reveal that the Respondent/Husband instituted Petition under Section 13(1) (ia) of the Hindu Marriage Act, 1955 and by Judgment and Decree dated 11/04/2018, the divorce came to be granted, when petition was allowed and the marriage solemnized between the parties was dissolved.

Admittedly, the said Judgment is ex-parte and the learned Judge has clearly recorded that the unrebutted contention of the Petitioner-Husband reveals that the behaviour of the Respondent-Wife has caused him mental and physical cruelty and divorce decree was granted.

3. Being aggrieved by the same, the Applicant-Wife filed Civil Misc. Application No.116 of 2018 under Order IX Rule 13 of CPC for setting aside the ex-parte Judgment and Decree dated 11/04/2018 passed by the Family Court.

A specific ground was raised in the application that the summons were issued to the Applicant and when the first date of hearing was scheduled, she was unable to attend the Court for certain reasons and even when she received further intimation about further hearings, under an impression that she would be served with fresh notice and since she was not served with any fresh summons or notice, either by the Respondent or the Court, she did not attend the proceedings. However, the ex-parte order was passed and the Judgment

and Decree was passed on 11/04/2018 i.e. immediately on the next date, when the matter was directed to proceed ex-parte.

In short, the application sought setting aside of the Decree specifically by invoking the ground under Order IX Rule 13 of CPC. This application came to be decided by the Family Court on 01/02/2025 and with a conclusion being drawn that no ground, which would permit the Court to intervene under Order IX Rule 13, was made out and the grounds set out for not attending the proceedings were found to be not sufficient to grant any indulgence in setting aside the ex-parte Judgment and Decree.

4. These two orders, passed by the Family Court, are the subject matter of the Appeal instituted before us, which is accompanied with an Application for condonation of delay, with a prayer for condoning the delay in filing the Appeal being aggrieved by both the orders i.e. the first order of ex-parte divorce decree and the second order, rejecting the application under Order IX Rule 13 of CPC.

5. The learned counsel Mr.Sarwate has raised two objections; firstly that the delay being gross and in absence of its sufficiency being established, the same cannot be condoned. The second ground, which he would press into service is, by relying upon Section 14 of the Limitation Act, which permit indulgence and permit consideration of the period consumed by a litigant in prosecuting remedy in the Court, which had no jurisdiction, but in this case, according to him, the Applicant was conscious of the remedy which was being availed and once

having chosen to avail the remedy by filing an application under Order IX Rule 13 of CPC, the other remedy of filing an appeal against the ex-parte Judgment is not available to her.

Per contra, the learned counsel for the Applicant would submit that the two remedies available are independent of each other and the Applicant deemed it appropriate to approach the Family Court by filing an application for setting aside the ex-parte order by formulating the application under Order IX Rule 13, but when this application is rejected, it is deemed appropriate to raise challenge to both the orders, by invoking Section 19 of the Family Court Act, as this is the only remedy available to the Applicant, since both the orders have finally determined the *lis* between the parties and are not interlocutory orders and that's why the remedy only lies to the High Court.

6. The learned counsel for the Applicant would rely upon the decision of the Apex Court in case of ***Bhivchandra Shankar More Vs. Balu Gangaram More & Ors.***¹, which has laid down a principle in law that the remedy available by way of an Appeal under Section 96(2) of the CPC i.e. the remedy of first appeal is a statutory right and the defendant cannot be deprived of the statutory right, merely on the ground that the application filed by him under Order IX Rule 13 of CPC has been dismissed.

He has also placed reliance on the decision of the Apex Court in the case of ***Koushik Mutually Aided Cooperative Housing Society Vs. Ameena Begum & Anr.***² in support of his submission that against an order passed under Order IX Rule

¹ Civil Application No.4669 of 2019 decided on 07/05/2019

² 2023 SCC OnLine SC 1662

13, which has rejected an application for setting aside the decree passed ex-parte, an appeal is provided under Order XLIII Rule 1(d) of CPC, but it is the proposition of law laid down by the authoritative pronouncement that this appeal shall lie only against the refusal to set aside the ex-parte decree and not when the same is allowed.

Submitting that when the application under Order IX Rule 13 is rejected, the remedy available to him, had it not been the proceedings before the Family Court would be remedy under Order XLIII Rule 1(d), but since the provisions of the Family Court exist in form of special provisions and in the wake of Section 19, which opens with a *non obstante* clause, thereby prescribing that notwithstanding contained in the Code of Civil Procedure or any other law, an appeal shall lie from every Judgment and Order, not being an interlocutory order, of a Family Court to the High Court, both on facts and on law, his Appeal is very much maintainable.

7. We have given our anxious consideration to the proposition of law, which is canvassed before us and we feel ourselves guided by the decision of the Apex Court in case of ***Bhivchandra*** (supra).

According to us, the said decision squarely cover the case of the Applicant, as the factual aspect involved would clearly reveal that being aggrieved by the dismissal of an application filed under Order IX Rule 13, the appellant and respondent Nos.14 and 15 filed Civil Appeal, but the same was withdrawn. On the next day of withdrawal, they filed Regular Appeal challenging the ex-parte decree passed in Regular Civil Suit

and also filed an application praying condonation of delay of four years, ten months and eight days. This application was allowed by the Additional District Judge, Baramati and the court noted that the appellant did not get an opportunity to contest the suit on merits. The District Judge also reasoned that the time spent in availing wrong proceedings, namely, application filed under Order IX Rule 13 was a sufficient justification for condoning the delay. The District Court, therefore, set aside the order of the trial Court by allowing the application for condonation of delay.

Being aggrieved by the order condoning the delay, Respondent Nos.1 to 8 approached the High Court by filing a writ petition and the High Court allowed the petition, by holding that the application filed under Order IX Rule 13 cannot be said to be 'wrong proceedings' and, hence, the time spent in pursuing the remedy by filing application under Order IX Rule 13 CPC cannot be excluded for calculating the limitation.

Reliance was placed upon the judgment in case of ***Jotiba Limbaji Kanashenavar Vs. Ramappa Jotiba Kanashenavar***, holding that having elected to pursue the remedy by filing an application under Order IX Rule 13 and having not pursued the remedy of appeal, which was open at the relevant time, the appellant can not fall back upon the remedy of appeal and seek condonation of delay.

The High Court also held that when two remedies are available to be prosecuted simultaneously, one cannot be converted into consecutive remedy.

8. This order being subjected to challenge before the Hon'ble Apex Court, the following points were determined for consideration.

“(i) Whether the time spent in the proceedings taken to set aside the ex-parte decree constitute “sufficient cause” within the meaning of Section 5 of the Indian Limitation Act, 1908 so as to condone the delay in preferring an appeal against the ex-parte decree on merits?

(ii) When an application filed under Order IX Rule 13 CPC has been dismissed on merits, whether regular appeal under Section 96(2) CPC is barred?”

The finding as regards the points that arose for consideration, the Apex Court specifically observed thus :-

“10. A conjoint reading of Order IX Rule 13 CPC and Section 96(2) CPC indicates that the defendant who suffered an ex-parte decree has two remedies:- (i) either to file an application under Order IX Rule 13 CPC to set aside the ex-parte decree to satisfy the court that summons were not duly served or those served, he was prevented by “sufficient cause” from appearing in the court when the suit was called for hearing; (ii) to file a regular appeal from the original decree to the first appellate court and challenge the ex-parte decree on merits.

11. It is to be pointed out that the scope of Order IX Rule 13 CPC and Section 96(2) CPC are entirely different. In an application filed under Order IX Rule 13 CPC, the Court has to see whether the summons were duly served or not or whether the defendant was prevented by any “sufficient cause” from appearing when the suit was called for hearing. If the Court is satisfied that the defendant was not duly served or that he was prevented for “sufficient cause”, the court may set aside the ex-parte decree and restore the suit to its original position. In terms of Section 96(2) CPC, the appeal lies from an original decree passed ex-parte. In the regular appeal filed under Section 96(2) CPC, the appellate court has wide jurisdiction to go into the merits of the decree. The scope of enquiry under two provisions is entirely different. Merely because the defendant pursued the remedy under Order IX Rule 13 CPC, it does not prohibit the defendant from filing the appeal if his application under Order IX Rule 13 CPC is dismissed.”

9. In paragraph 13, Their Lordship of the Apex Court specifically acknowledged that the right of appeal under

Section 96(2) is a statutory right and the defendant cannot be deprived of the said right merely on the ground that the application filed by him under Order IX Rule 13 has been dismissed.

On consideration of the precedents governing Order IX Rule 13, the observation of the High Court to the effect that, “*the remedies provided as simultaneous and cannot be converted into consecutive remedies*” was held to be not applicable because it would amount to rigid interpretation fitted in a strait-jacket formula. It is categorically held that in cases where the defendant has adopted dilatory tactics or where there is lack of *bonafide* in pursuing the two remedies consecutively, the court may decline to condone the delay in filing the first appeal.

Pronouncing upon the ‘sufficiency of cause’, it is reiterated that it should be given liberal construction, so as to advance sustainable justice when there is no inaction, no negligence nor lack of *bonafide* are imputable to the appellant.

10. In the wake of the aforesaid discussion, despite the fact that the earlier application was withdrawn on 11/06/2013, which was filed under Order IX Rule 3 and on the very next day, the appeal was filed challenging the ex-parte decree and judgment passed in Regular Civil Suit, the Court formed an opinion that the time spent in pursuing the application under Order IX Rule 13 is ‘sufficient cause’ for condoning the delay. In specific, it is noted in paragraph 18 that, the objection raised as regards not entertaining the appeal after the first forum was given up, was not accepted by the Apex Court and,

resultantly, the judgment passed by the High Court was set aside by condoning the delay in filing the appeal against the judgment in the Regular Civil Suit and the Appeal was directed to be restored.

11. In our view, the facts as well as the proposition of law flowing therefrom in *Bhivchandra* (supra) clearly cover the case of the Applicant, as we have noted that the Applicant was aggrieved by the ex-parte decree of divorce and chose to file an application under Order IX Rule 13, which came to be rejected on merits. However, the right available to the Applicant to file a statutory appeal in form of first appeal and in this case, an appeal under Section 19 of the Family Courts Act, 1984 is not impacted merely because the said application is rejected. Further more, since the Applicant is also aggrieved by the rejection of the said application, the only remedy available to her is filing an appeal before the High Court under Section 19 and she has chosen to file the present Appeal, raising challenge to both the orders.

In filing the Appeal, the delay has occasioned and the Interim Application seeking condonation of delay, has specifically set out a ground that raising a challenge to the ex-parte order, an application was first filed, but when that application was not entertained and rather the application, being filed in the year 2018 was only decided in 2025, immediately thereafter, with a delay of four days, the appeal is filed raising a challenge to the said order dated 01/02/2025.

12. In the application of condonation of delay, the justification is offered by stating that because the application

under Order IX Rule 13 was pending and that course of action was chartered by the Applicant at the advice of the counsel, once that application is rejected, and its rejection definitely did not impact the right of the Applicant to pursue the remedy of appeal, which is a right conferred upon her, we find that the explanation offered that she was availing remedy under Order IX Rule 13, to be a sufficient justification for condoning the delay.

In very identical circumstances, we find that the Apex Court in the case of ***Bhivchandra*** (supra) had condoned the delay of four years, ten months and eight days and, since, the position of law as emerging from ***Bhivchandra*** (supra) is in the background of identical facts, with which we are confronted with, we find that the case of the Applicant is covered by the observations of the Apex Court in ***Bhivchandra*** (supra).

13. Mr.Sarwate attempted to rely upon the decision in the case of ***Koushik Mutually Aided Cooperative Housing Society*** (supra). But, according to us, the said decision do not lay down any proposition of law which support him, and in fact, runs contrary to the one laid down in ***Bhivchandra*** (supra), as the said decision is only for the proposition about the remedy available upon an application under Order IX Rule 13 having been rejected and the Apex Court clearly identifies that it is the remedy available under Order XLIII Rule 1(d) of CPC, but there is no remedy available if such an application is allowed and in our considered view, the decision in ***Koushik Mutually Aided Cooperative Housing Society*** (supra) in no way disturb the proposition of law flowing from ***Bhivchandra*** (supra).

Learned counsel Mr.Sarwate has specifically insisted on the plea taken by him that the Respondent, by this time is already married and there is a child born out of the said wedlock. However, this submission and circumstance failed to impress us, as we are of the view that when it comes to the decision to be taken in terms of law, the factual inconvenience, in our opinion, has no bearing and can be of no relevance.

14. In the wake of the aforesaid, since we are satisfied with the *bonafides* of delay that is sought to be condoned, Interim Application No.12273 of 2025 is made absolute in terms of prayer clauses (a) and (b).

The Registry is directed to register the Family Court Appeal, which is directed to be listed after vacation.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)