UKHC010205412026

2026:UHC:10732-DB

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal from Order No.433 of 2026

Jaman Singh Mehra .....Appellant

Versus

Indra Mehra and another .....Respondents

Present:-

Mr. S.K. Mandal, learned counsel for the appellant.

Coram:Hon'ble Ravindra Maithani, J.
Hon'ble Siddhartha Sah, J.

Hon'ble Ravindra Maithani, J. (Oral)

In the instant appeal, challenge is given to the impugned judgment and order dated 27.10.2026, passed by Additional Principal Judge, Family Court, Haldwani, District Nainital in Restoration Application No. 7 of 2025, Smt. Indra Mehra vs. Jaman Singh Mehra, (the "restoration case") by which an application under Section 5 of the Limitation Act, 1963 ("Act, 1963"), filed by respondent no. 1 was allowed and while allowing an application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 ("CPC"), filed by respondent no. 1 for setting aside ex-parte judgment dated 25.11.2023, passed in Divorce Case No. 299 of 2022, Jaman Singh Mehra vs. Smt. Indra Mehra and another (the "suit"), filed under Section 13(1)(i) & (ib) Hindu Marriage Act, 1955, the ex-parte judgment dated 25.11.2023, passed in the suit was set aside.

2. Heard learned counsel for the appellant and perused the record.

3. The appellant did file the suit seeking divorce from respondent no. 1 on the ground of adultery; in the suit, two addresses of respondent was written; one of Haldwani, District Nainital and second of Tehsil Gangolihat, District Pithoragarh.

4. It was the ground taken by the respondent no. 1 that in fact, she was not staying with her brother in Haldwani at the relevant time when the notices were issued in the suit. She was staying with her mother in Pithoragarh. The notices in the suit were never served on her. There were endorsement of insufficient address, door lock, and thereafter, based on computer generated report that item delivered, service has been found sufficient on respondent no.1, which is not correct. The respondent no. 1 never received the notice in the suit. It was objected to by the appellant on multiple grounds, but by the impugned order while allowing the application filed under Section 5 of the Act, 1963, the application under Order 9 Rule 13 CPC has also been allowed, which is impugned.

5. Learned counsel for the appellant would submit that appellant has an address of Haldwani also, on which address she has filed an application under Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short, “BNSS”). It is argued that the Court found service sufficient on the respondent no. 1. Thereafter, the suit proceeded ex-parte against the respondent. Referring to para 18 of the Divorce Petition, it is argued that in fact parties permanently resided in Haldwani. Learned counsel for the appellant further argued that in her application under Section 144 of BNSS, in para 7, the respondent no.1 has stated that she came to know about the change of name of wife in the official record of the appellant. It is argued that in fact for that purpose the appellant had given application

in the year 2024 and this has not been explained by the respondent no. 1. He would further submit that under Section 27 of the General Clause Act, the service is deemed sufficient on respondent no.1. Hence, it is argued that the order impugned deserves to be set aside.

6. Perusal of the impugned order reveals that in fact the suit was filed against respondent no.1 by giving her two addresses; one of District Pithoragarh and second of Haldwani, District Nainital. Impugned order records that notices were not sent at Pithoragarh address of respondent no. 1. The notice sent at Haldwani, District Nainital address of respondent no. 1 was first could not be distributed to respondent no. 1 on the ground of insufficient address and door lock, and thereafter, in the suit the Court received a computer generated tracking report that item delivered, which means acknowledgment was also not received back. Delivery may be presumed in certain cases, but here in the instant case, there was no record as to who received the notice for respondent no.1. No document pertaining to receipt of the notice was received in the Court in the suit. As stated, based on tracking report, service was deemed sufficient.

7. In the impugned order, it has rightly been recorded that the respondent no. 1 denied of having received the notice. She is specific that at the relevant time she was staying in Pithoragarh. In fact, impugned order takes notice of the objection that was filed by the appellant in the restoration case, wherein in para 14 he states that subsequently the appellant came to know that respondent no. 1 has gone to Pithoragarh and is staying there. Appellant did know that the respondent no. 1 is either staying at Haldwani or at Pithoragarh. But at Pithoragarh address, no notice was issued and at the Haldwani address, service was deemed sufficient based on tracking report.

8. In the impugned order, it has rightly been concluded that it may not be safe to conclude, based on the computer generated report that service is sufficient on respondent no. 1. While making such observation, the impugned order also took note of the fact that earlier the item could not be delivered due to insufficient address and door locked. Obviously, if address was found insufficient at one point of time, how at a second time it was sufficient ? While discussing all those aspects, the delay has been condoned in preferring the application under Order 9 Rule 13 of the CPC, and accordingly the application under Order 9 Rule 13 CPC has been allowed.

9. This Court is of the considered view that the Court below has not committed any error in condoning delay and allowing the application under Order 9 Rule 13 CPC filed by respondent no. 1. There is no reason to make any interference in the impugned order. The appeal deserves to be dismissed and is dismissed accordingly.

(Siddhartha Sah, J.)
23.11.2026

(Ravindra Maithani, J.)
23.11.2026

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