

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE ANAND PATHAK &
HON'BLE SHRI JUSTICE HIRDESH**

ON THE 29TH OF JULY, 2025

FIRST APPEAL NO. 1573 OF 2024

SMT. AARTI

Versus

PRASHANT SHARMA

Appearance:

Shri Somnath Seth- learned Counsel for appellant- wife.

Shri Upendra Yadav- learned Counsel for respondent- husband.

JUDGMENT

Per Justice Hirdesh:-

Considering the reasons assigned in **IA No.5530 of 2024**, application under Section 5 of the Limitation Act for condonation of delay in filing the appeal, the delay of 60 days in filing the appeal is hereby condoned.

(2) Heard on admission.

(3) The instant first appeal under Section 28 of the Hindu Marriage Act (hereinafter it would be referred to as " the HM Act") has been filed by appellant against *ex parte* judgment and decree dated 7th of March, 2024 passed by learned Additional District Judge to the Court of District Judge, Lahar, District Bhind (MP) in RCSHM No.17 of 2024, whereby the divorce application under Section 13(1)(i-a) (i-b) of the HM Act filed by respondent- husband has been allowed.

(4) Short facts of case sufficient to decide the present appeal are that marriage of appellant with respondent was solemnized on 11th of March, 2015 according to Hindu rites and customs and there was no child out of their wedlock. Immediately after marriage, as per allegation of respondent, behaviour of his wife- appellant towards him and his family became cruel. She used to fight and quarrel over trivial matters and frequently used to go to her maternal home. When he objected

to it, appellant used to give a threat to commit suicide and did not allow him to have physical relations. On 20th of August, 2021, she went to her maternal home with her father and did not turn up despite several efforts. Appellant has abandoned him without any reason for a continuous period from 2021 prior to filing of divorce application. Thus, he prayed for dissolution of marriage.

(5) Due to absence of appellant, *ex parte* proceedings were initiated against her. No reply/WS has been filed on behalf of appellant. Only on the basis of evidence of husband, the Family Court framed issues and *vide ex parte* judgment dated 07-03-2024 passed a decree of divorce in favour of husband holding that after solemnization of marriage, appellant treated him with cruelty and she had abandoned him without any reason for a continuous period of at-least two years immediately preceding filing of divorce application.

(6) It is contended on behalf of appellant that *ex parte* judgment and decree has been passed by the Family Court at the first instance in a mechanical manner without application of mind and without serving summons to appellant. From Document SAMGRA ID of appellant, it shows that same was prepared on 27-09-2023 and at that time, appellant was residing with respondent at Village Sarasai whereas divorce application filed on 25th January, 2024 and respondent was well-aware of this fact and intentionally had mentioned wrong address of appellant as "Sarvodaya Colony, Karera, District Shivpuri", therefore, appellant could not either defend her case or produce any documentary evidence before the Family Court to rebut the evidence of respondent. It is further contended that as per provisions of Section 21(b) of the HM Act, trial of divorce suit should be preceded at an earliest preferably within a period of six months from the date of service of notice, but the Family Court passed *ex parte* decree in a hurried manner without serving notice upon appellant and without following due procedure of law laid down under Order 5 of CPC. It is further contended that on filing divorce application by respondent on 25th of January, 2024, the case was registered RCSHM No.17 of 2024 through Reader report obtained on 29th of January, 2024 and notice was issued to appellant for her appearance on 5th of March, 2024. In

absence of Presiding Officer and without any fixed date, matter was taken up on 24th of February, 2024 and on 5th of March, 2024, proceeding has taken place and appellant was proceeded *ex parte*. Immediately on 7th of March, 2024, by fixing a date for recording of statement, on the same date, an *ex parte* decree of divorce was passed in favour of respondent which is illegal and against law. It is further contended that the divorce petition was filed by respondent, which was not within the jurisdiction because of the fact that the brother-in-law of respondent is residing within the vicinity of Lahar, not respondent. It is further contended that on 28th of July, 2024, appellant came to know about the *ex parte* decree of divorce dated 7th of March, 2024 on Whats app group of her father on the basis of information given by Police and therefore, the instant first appeal has been filed within the period of limitation.

(7) Learned Counsel for respondent opposed the contentions of appellant and submitted that service of summons has been treated as complete in terms of statutory provisions of Civil Procedure Code and the appellant deliberately, knowingly remained absent before the Family Court and avoided to participate in proceedings of divorce petition without filing any reply or written statement. The Family committed no error in proceeding *ex parte* against appellant and passing decree of divorce in favour of respondent. Hence, prayed for dismissal of this appeal.

(8) Heard learned Counsel for parties and perused the record as well as impugned judgment and decree.

(9) The Hon'ble Apex Court in the case of ***Balwinder Kaur Vs. Hardeep Singh, (1997) 11 SCC 701*** has held as under :-

"Section 23 of the Hindu Marriage Act mandates the court before granting decree for divorce, whether defended or not to satisfy itself (1) if the grounds for claiming relief exist and the petitioner is not taking advantage of his or her own wrong or disability for the purpose of such relief and (2) the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty. A duty is also cast on the court in the first instance, in every case where it is possible

so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties. Under sub-section (3) of Section 23 of the Act, the court can even refer the matter to any person named by the parties for the purpose of reconciliation and to adjourn the matter for that purpose. These objectives and principles govern all courts trying matrimonial matters. The judgment of the District Judge is silent of the learned Judge took into consideration all what is mentioned in Section 23 of the Act. A question also arises can a party defeat the provisions of sub-section (2) and sub-section (3) of Section 23 of the Act by remaining *ex-parte* and the court is helpless in requiring the presence of that party even if in the circumstances of the case so required. We are of the opinion that court can in such a situation require the personal presence of the parties. Though the proceedings were *ex-parte* in the case like this the Court cannot be a silent spectator and it should itself endeavour to find out the truth by putting questions to the witnesses and eliciting answers from them."

(Emphasis supplied)

(10) It reveals from the perusal of proceedings of divorce suit that the divorce application was filed by respondent on 25th of January, 2023 and the case was registered RCSHM No.17 of 2024 through Reader report obtained on 29th of January, 2024 and notice was issued to appellant for her appearance on 5th of March, 2024. In absence of Presiding Officer and without any fixed date, matter was taken up on 24th of February, 2024 and on 5th of March, 2024, proceeding has taken place and appellant was proceeded *ex parte* immediately. On 7th of March, 2024, by fixing a date for recording of statement, on the same date, an *ex parte* decree of divorce was passed in favour of respondent. The appellant was not aware of the fact that she proceeded *ex parte* in divorce petition pending in Family Court. No efforts were made to service the notice upon appellant. It is trite law that every party should get opportunity to contest his/her case on merits and the case should be decided on merits after affording opportunity to all the parties.

(11) Under these circumstances, learned Family Court has committed an error in allowing divorce application filed by respondent in absence of reply or WS of appellant and divorce application ought to have decided by the Family Court after giving opportunity of hearing to both the parties and considering merits of case in accordance with law.

(12) Therefore, considering the law laid down by Hon'ble Apex Court in the above-cited case, in the interest of justice, this Court thinks appropriate that the matter may be remanded back to the Family Court to decide the matter afresh on merits in accordance with law after affording opportunities of hearing to both the parties and pleadings/WS available on record.

(13) Accordingly, the impugned *ex parte* judgment and decree dated 7th of March, 2024 passed by learned Additional District Judge to the Court of District Judge, Lahar in RCSHM No.17 of 2014 is hereby **set aside** and the matter is remanded back to the Family Court concerned. Both the parties are directed that they shall put their appearance first before the Family Court on **18th of August, 2025**. The Family Court, after affording proper opportunity of hearing to both the parties and after giving opportunity to file Written Statement/reply by appellant, shall decide divorce application filed by respondent, afresh on merits in accordance with law on the basis of pleadings/Written Statement, which would come on record, within a period of **six months'** from the date of receipt of copy of this judgment.

(14) With the aforesaid directions, the instant appeal stands **disposed of**.

(15) Let a copy of this judgment along-with record be sent to the Family Court forthwith.

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE