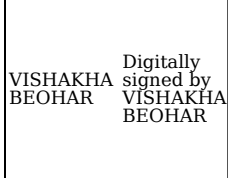




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HIGH COURT OF CHHATTISGARH AT BILASPUR

**FA(MAT) No. 109 of 2023****Judgment Reserved on 17.07.2025****Judgment Delivered on 06.08.2025**

1 - Smt. Laxmin Sahu D/o Shri Shiv Kumar Sahu Aged About 26 Years
R/o Ward No. 5, Sahupara, Sargaon, Police Chowki - Sargaon, Police
Station Pathariya, District Mungeli, Chhattisgarh. **... Appellant**

versus

1 - Yogesh Kumar Sahu S/o Shri Mohan Lal Sahu Aged About 27 Years
R/o Village Kadar, Police Station And Tahsil - Bhatapara, District
Balodabazar - Bhatapara, Chhattisgarh. **----Non-appellant**

For Appellant : Ms. Madhunisha Singh, Advocate
For Non-appellant : Mr. Arvind Prasad, Advocate

Hon'ble Smt. Justice Rajani Dubey and
Hon'ble Shri Justice Amitendra Kishore Prasad
CAV Judgment

Per, Amitendra Kishore Prasad, J.

1. This first appeal under Section 19(1) of the Family Courts Act, 1984 has been preferred by the appellant-wife (non-applicant therein) against the judgment and decree dated 21.12.2022, passed by the learned Judge, Family Court, Balodabazar (C.G.) in H.M.A. No. 62A/2022, whereby the learned Family Court allowed

the suit/application filed by the respondent-husband under Section 13(1) of the Hindu Marriage Act, 1955, and granted a decree of divorce on the grounds of cruelty and desertion.

2. Brief facts of the case are that the marriage between the parties was solemnized on 24.04.2012, as per Hindu rites and customs. On 23.12.2013, a daughter namely Madhu Sahu was born out of their wedlock, who currently lives with the appellant-wife. The husband filed a divorce application / petition before the Family Court stating that the appellant-wife treated him with cruelty, mentally harassed him, frequently insisted on going to her maternal home in Sargaon, and voluntarily deserted him since 2014, without any reasonable cause or justification. The husband asserted that repeated efforts to bring the wife back were in vain and the matrimonial relationship had irretrievably broken down.
3. The record reveals that the appellant-wife was duly served with summons. Despite service, she did not appear before the Family Court on any of the dates of hearing. The matter was adjourned on multiple occasions, but the appellant failed to avail herself of those opportunities. Ultimately, the Family Court proceeded *ex-parte* and decided the matter based on the oral and documentary evidence adduced by the husband.
4. Aggrieved by the said *ex-parte* decree, the appellant-wife has filed the present appeal, contending that she was not aware of the proceedings and did not get an opportunity to defend herself. She

has prayed for setting aside the *ex-parte* decree and for restoration of the matrimonial relationship.

5. Learned counsel for the appellant submits that the appellant-wife had no knowledge of the proceedings before the Family Court and that she was never effectively served. It is contended that she was residing at her parental house during the relevant period and due to certain family and health issues, she could not appear. It is argued that the *ex-parte* proceedings have caused grave prejudice to the appellant, as she was denied a fair opportunity to contest the case. It is further submitted that the learned Family Court ought to have taken additional measures to secure her presence, considering the sensitive nature of matrimonial disputes. It is argued that marriage is a sacred institution and should not be dissolved without effective adjudication on merits with participation of both parties. Learned counsel also relies upon the judgment of the Hon'ble Supreme Court in the matters of **Thangam vs. M. Rajesh** reported in **2018 SCC OnLine Mad 5190** and **Indira Gangele vs. Shailendra Kumar Gangele** reported in **1992 SCC OnLine MP 71**.

6. Per contra, learned counsel for the respondent-husband supports the impugned judgment and submits that the appellant was duly served with summons and despite service, failed to appear before the Family Court. It is argued that the Family Court granted sufficient opportunities over multiple dates but the appellant

remained absent without showing any sufficient cause. It is further submitted that the respondent had no choice but to proceed *ex-parte*. The evidence led by the husband regarding cruelty and desertion went un rebutted and the learned Family Court rightly appreciated the same and granted a decree of divorce. Accordingly, the appeal is filed with a view to delay and harass the respondent and deserves to be dismissed.

7. Now, the question arise for consideration is whether the Family Court erred in proceeding *ex-parte* against the appellant-wife and whether the appellant has made out any sufficient cause for her non-appearance?
8. The record clearly indicates that the summons were served at the wife's last known and permanent address. On multiple occasions, the Family Court adjourned the matter to provide her an opportunity to appear before the Court but, still, she failed to contest the case or submit a written statement. The Family Court, in its discretion, rightly proceeded *ex-parte* after due compliance with procedural requirements. Where the party, despite service of summons, chooses not to appear, the Family Court is justified in proceeding *ex-parte*. A mere statement in appeal that the appellant was unaware of proceedings, without any cogent explanation, is not enough to vitiate the decree.
9. The Hon'ble Supreme Court in **G.P. Srivastava v. R.K. Raizada** **(2000) 3 SCC 54** observed that a party does not have an absolute

right to have an ex-parte order set aside merely on the asking. The Court must be satisfied that there was sufficient cause which prevented the defendant from appearing. Relevant para is quoted hereinbelow:-

“.....It was contended that the absence of the appellant and his counsel in the Trial Court was on account of the aforesaid circumstances and not intentional. The application was supported by his affidavit and a medical certificate. The Trial Court did not accept the pleas raised by the appellant and found that the absence of the appellant or his counsel in the Court on 10.3.1983 was not for just or sufficient cause. The filing of the medical certificate was not disputed but the same was not relied on as it was found to have been obtained from a private doctor and not from a Government doctor. The High Court also did not accept the contentions of the appellant and noticing his previous conduct rejected the revision petition refusing to set aside the ex-parte decree passed against him. Under [Order 9 Rule 13 C.P.C.](#) an ex-parte decree passed against a defendant can be set aside upon satisfaction of the Court that either the summons were not duly served upon the defendant or he was prevented by any 'sufficient cause' from appearing when the suit was called on for hearing. Unless 'sufficient cause' is shown for non-appearance of the defendant in the case on the date of hearing, the Court has no power to set aside an ex-parte decree. The words "was prevented by any sufficient cause from appearing" must be liberally construed to enable the court to do complete justice between the parties particularly

when no negligence or inaction is imputable to erring party. Sufficient cause for the purpose of Order 9 Rule 13 has to be construed as elastic expression for which no hard and fast guidelines can be prescribed. The courts have wide discretion in deciding the sufficient cause keeping in view the peculiar facts and circumstances of each case. The 'sufficient cause' for non appearance refers to the date on which the absence was made a ground for proceeding ex-parte and cannot be stretched to rely upon other circumstances anterior in time. If 'sufficient cause' is made out for non appearance of the defendant on the date fixed for hearing when ex-parte proceedings initiated against him, he cannot be penalised for his previous negligence which had been overlooked and thereby condoned earlier. In a case where defendant approaches the Court immediately and within the statutory time specified, the discretion is normally exercised in his favour, provided the absence was not malafide or intentional.....”

10. Similarly, in **Arun Vyas v. Anita Vyas (1999) 4 SCC 690**, the Apex Court held that if the wife deliberately avoids court process and fails to participate in proceedings despite opportunities, and the court is satisfied with the husband's case, a decree of divorce can be rightly granted. The relevant para is quoted hereinbelow:-

“.....Therefore, in regard to Section 406 the order of the learned Magistrate discharging the appellants cannot be faulted with. But regarding offence under Section 498-A the learned Magistrate did not advert to the second limb of the second part in [Section 473](#) Cr.P.C. referred to above. The order

of the learned Magistrate on this aspect was unsustainable so the High Court has committed no illegality in setting aside that part of the order of the learned Magistrate. In [Vanka Radhamanohari \(Smt.\) vs. Vanka Venkata Reddy & Ors.](#) [(1993) 3 SCC 4], the wife who was subjected to cruelty left the matrimonial home in 1985. In 1990 she filed the complaint alleging cruelty and maltreatment against the husband and mother-in-law and further stating that the husband had remarried. The Magistrate took cognizance of offences under [Sections 498-A](#) and [494](#) IPC. On the petition of the husband under [Section 482](#) Cr.P.C., the High Court quashed the complaint. This Court, on appeal from the judgment of the High Court, held that the High Court erred in quashing the complaint as [Section 468](#) Cr.P.C. could not be applied to offence under [Section 494](#) IPC (for it is punishable with imprisonment for a term which may extend to 7 years) and even in respect of offence under Section 498-A, the attention of the High Court was not drawn to [Section 473](#) Cr.P.C. While setting aside the impugned order of the High Court this Court observed : "As such, courts while considering the question of limitation for an offence under Section 498-A i.e. subjecting a woman to cruelty by her husband or the relative of her husband, should judge that question, in the light of Section 473 of the Code, which requires the Court, not only to examine as to whether the delay has been properly explained, but as to whether "it is necessary to do so in the interests of justice".

11. In the present case, there is nothing on record to indicate that the wife made any effort to approach the Family Court even after

passing of the decree until filing of the present appeal. No application under Order IX Rule 13 of CPC was moved before the trial Court to set aside the *ex-parte* decree either.

12. The Hon'ble Supreme Court in the matter of **Parimal vs. Veena @ Bharti** reported in **(2011) 3 SCC 545** has held as under:-

“It is evident from the above that an ex-parte decree against a defendant has to be set aside if the party satisfies the Court that summons had not been duly served or he was prevented by sufficient cause from appearing when the suit was called on for hearing. However, the court shall not set aside the said decree on mere irregularity in the service of summons or in a case where the defendant had notice of the date and sufficient time to appear in the court. The legislature in its wisdom, made the second proviso, mandatory in nature. Thus, it is not permissible for the court to allow the application in utter disregard of the terms and conditions incorporated in the second proviso herein.”

13. Besides above, the allegations made by the husband were duly supported by his evidence which remained uncontroverted. The learned Family Court has carefully evaluated the material on record and found that the husband was subjected to mental cruelty and that the wife had deserted him for more than two years prior to filing of the petition.

14. Under such circumstances, this Court do not warrant any

interference in the *ex-parte* decree passed by the learned Family Court. The appellant has failed to make out a bona fide case or explain her prolonged silence and absence during trial proceedings.

15. In view of the above, we are of the opinion that the Family Court did not commit any illegality or procedural error in passing the impugned decree. The appeal, being devoid of merit, is liable to be and is accordingly **dismissed**.

No order as to cost(s).

Sd/-

(Rajani Dubey)
Judge

Sd/-

(Amitendra Kishore Prasad)
Judge

Vishakha