

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8175 OF 2010
(Arising out of SLP(C) No.16726 OF 2010)

MANJU DEVI

.....APPELLANT

VERSUS

SUBODH KUMAR @ MANOJ KUMAR

.....RESPONDENT

O R D E R

Leave granted.

This is an appeal for setting aside order 22.03.2010 passed by the Division Bench of the Patna High Court which declined to interfere with the dismissal by Principal Judge, Family Court, Munger (hereinafter described as 'the trial Court') of the application filed by the appellant for setting aside the ex parte decree of divorce.

The appellant was married to Surendra Kumar Bhagat in April 1979. After about 20 years, the husband filed a petition for divorce, which was registered as Matrimonial Divorce Suit No. 41/1998. By an ex parte judgment dated 18.12.2004, 7th Additional District Judge, Munger decreed the suit. After 3 years 9 months and 21 days the appellant filed Misc. Petition No.1/2009 under Order IX Rule 13 CPC for setting aside the ex parte decree. She

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also filed an application for condonation of delay by stating that due to the demise of her son who was suffering from polio, she became mentally disturbed and did not attend the proceedings of the case instituted by the husband more so because he had given an assurance that he will not pursue the matter.

By an order dated 11.1.2010, the trial Court dismissed the application for condonation of delay along with the one filed

under Order IX Rule 13 CPC. The Division Bench of the High Court dismissed the miscellaneous appeal and confirmed the order passed by the trial Court.

We have heard learned counsel for the parties and perused the record. In our view, the cause shown by the appellant for delayed filing of the application for setting aside ex parte decree was sufficient and the Family Court and the High Court committed an error by refusing to set aside decree dated 18.12.2004.

In the result, the appeal is allowed. The impugned order as also the one passed by the trial Court on the applications filed by the appellant under Order IX Rule 13 CPC and Section 5 of the Limitation Act are set aside. Delay in filing the application under Order IX Rule 13 CPC is condoned. The application under Order IX Rule 13 CPC is allowed and ex parte decree of divorce passed by 7th Additional District Judge, Munger is set aside. As

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a sequel to this, Matrimonial Divorce Suit No.41/1998 is restored to its original number.

The matter may now be listed before Family Court, Munger for being disposed of in accordance with law.

.....J.
(G.S.SINGHVI)

.....J.
(ASOK KUMAR GANGULY)

NEW DELHI;
SEPTEMBER 20, 2010.

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ITEM NO.49

COURT NO.11

SECTION XVI

Petition(s) for Special Leave to Appeal (Civil) No(s).16726/2010

(From the judgement and order dated 22/03/2010 in MA No. 119/2010
of The HIGH COURT OF PATNA)

MANJU DEVI

Petitioner(s)

VERSUS

SUBODH KUMAR @ MANOJ KUMAR

Respondent(s)

(With prayer for interim relief)

Date: 20/09/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Mr.S.B.Sanyal, Sr.Adv.
Mr.R.P.Yadav, Adv.
Mr. Subhro Sanyal,Adv.

For Respondent(s) Mr. Ranjan Mukherjee,Adv.
Mr.S.Bhowmick, Adv.
Mr.S.C.Ghosh, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master

(Signed order is placed on the file)