

**Court No. - 39**

**Case :-** FIRST APPEAL No. - 1210 of 2023

**Appellant :-** Smt. Jyoti Verma

**Respondent :-** Prashant Kumar Verma

**Counsel for Appellant :-** Sunil Kumar Upadhyay

**Counsel for Respondent :-** Bharat Singh

**Hon'ble Saumitra Dayal Singh,J.**

**Hon'ble Shiv Shanker Prasad,J.**

1. Heard Sri Sunil Kumar Upadhyay, learned counsel for the appellant and Sri Bharat Singh, learned counsel for the respondent.

2. Present appeal has been filed under Section 19 of the Family Courts Act, 1984, arising from the order of the learned Additional Principal Judge, Family Court, Moradabad in Matrimonial Petition (Old) No. 1701042 of 2014 (Prashant Kumar Verma Vs. Smt. Jyoti Verma) dated 22.08.2023, whereby the said court has rejected application Paper Nos. 3 Kha and 5 Kha, filed by the appellant seeking condonation of delay in filing the recall application and the recall application filed seeking recall of the *ex parte* decree of divorce dated 29.11.2021 passed in Matrimonial Petition (Old) No. 1701042 of 2014 (Prashant Kumar Verma Vs. Smt. Jyoti Verma).

3. Upon hearing learned counsel for the parties and having perused the record, we find no good ground to offer any interference. The learned court below has passed a detailed reasoned order dated 22.08.2023, taking note of the relevant details of the proceedings and the conduct offered by the appellant. It is upon consideration of that material aspect that the learned court below has not felt satisfied as to cause shown either for the delay or for recall of the *ex parte* order.

4. Relevant to our discussion, it may be noted, the parties had earlier instituted a joint petition, seeking dissolution of their

marriage being Case No. 940 of 2011. Those proceedings came to be dismissed for want of prosecution on 13.03.2014 occasioned by non-appearance of the appellant.

5. After that, the respondent instituted divorce proceedings in Matrimonial Petition (Old) No. 1701042 of 2014. Upon issuance of notice, the appellant did appear in those proceedings and filed written statement. She continued to appear even after framing of issues. However, at the stage of evidence of the respondent, she started abstaining from the proceedings. On 19.01.2017, cross examination of PW-1 was completed after nine dates. Twelve dates were fixed to cross examine PW-2 but the appellant failed to avail that opportunity. It was closed on 21.05.2018. Six dates were fixed from 25.07.2018 to 05.12.2018 thereafter to allow the appellant opportunity to lead evidence. That opportunity was also closed on 05.12.2018.

6. Only thereafter, on 10.01.2019 the appellant filed an application Paper No. 44 Ga, seeking recall of the *ex parte* proceedings. Even on that application twelve dates came to be fixed whereafter on 18.07.2019, the same was dismissed for want of prosecution.

7. On 31.07.2019, the divorce case proceedings were heard *ex parte* and order reserved. Again, the appellant filed application Paper No. 54 Ga, seeking recall of the order dated 18.07.2019. On 11.02.2020, the said application was allowed and the appellant was granted opportunity to cross examine PW-2.

8. Thereafter, on 16.09.2021 plaintiff evidence was closed. Endorsement of the *amicus curiae* appearing with the appellant was obtained on the order sheet. However, the appellant remained absent from the proceedings on the next date, 30.09.2021. Later, she sought adjournment on 22.10.2021, which was allowed. On the next date 09.11.2021, none

appeared on behalf of the appellant. At that stage, defendant's evidence was closed and the matter fixed for *ex parte* hearing. On 15.11.2021, the *ex parte* proceeding was concluded and the judgement pronounced on 29.11.2021.

9. It is in such circumstances that the recall application came to be filed with delay on 01.07.2022.

10. Perusal of that application suggests, the appellant tried to set up ground of illness. However, as to reason for her non-appearance, certain medical papers are seen to have been annexed. Neither those papers nor any other document exists to bring out any real obstruction faced by the appellant as may have prevented her from filing the recall application over a long duration from November 2021 to July 2022.

11. The previous conduct of the appellant clearly brings out her negligence or deliberate act to cause undue delay in the proceedings. The divorce case proceedings were instituted in the year 2014. The same ought to have concluded much earlier. As noted above, that delay is attributed to the conduct offered by the appellant in seeking repeated adjournments and ensuring her repeatedly absence from the proceedings. Thus she caused delay of almost seven years.

12. Twice the matter was fixed for *ex parte* hearing. Earlier, the learned court below had taken a lenient view and recalled the *ex parte* proceedings. However, the appellant did not offer correction and continued to cause delay, as has been noted above.

13. In view of such facts, the learned court below has not found sufficient cause either to allow the condonation of delay in filing the recall application or to recall the *ex parte* order. While requirement to give opportunity of hearing is non-negotiable, it is not for the litigant to use that pure principle applied by

courts, to defeat the ends of justice. It is not uncommon in our court practices that a party tries to take undue advantage of that principle of natural justice enforced by Courts.

14. Delay largely attributed to the conduct of a party, he may never be allowed to turn around and take advantage of the same even if the costs are offered to be paid. To accept the same, it would be to make mockery of justice dispensation.

15. In view of the above, present appeal lacks merit and is accordingly **dismissed**. No order as to cost.

**Order Date :-** 20.11.2023

Abhilash

(Shiv Shanker Prasad, J.) (S. D. Singh, J.)