
Before D. K. Jain, C.J. & Surya Kant, JJ.

HARINDER PAL SINGH,—Appellant

versus

SUKHWANT KAUR,—Respondent

L.P.A. NO. 1016 of 2002 &
C.M. NO. 2522 OF 2002 (O&M)

1st March, 2006

Limitation Act, 1963—S. 5—Divorce decree in favour of husband—Wife filed appeal in High Court—Husband failing to be represented before the learned Single Judge—Learned Single Judge dismissing husband's divorce petition exparte—Application under O.IX Rl. 13 CPC moved by husband also dismissed—Delay of 248 days in filing LPA—No wilful absence from Court—Counsel engaged by husband remained seriously ill for several years till he expired—Appellant's non-appearance in person at the time of hearing the appeal also beyond his control as he had already gone abroad—Sufficient cause for not preferring the appeal within the prescribed limitation period—Delay of 248 days in filing the appeal condoned—Wife's appeal ought to be decided afresh after hearing both the parties—Judgment and decree passed by learned Single Judge not sustainable—Appeal allowed, matter remitted for re-adjudication of wife's appeal.

Held, that the appellant having engaged a counsel to represent him in the first appeal cannot be accused of inaction or acting in a negligent manner. Similarly, there is nothing on record to suggest that he remained wilfully absent from court when the first appeal ripened for hearing or he deliberately wanted to prolong the matter. The appellant, while going abroad, could not have possibly visualized about serious illness of his counsel in near future and that too of a fatal degree. The appellant's non-appearance in person on 30th July, 2001 when the respondent's appeal was taken up for hearing, also appears to be beyond his control as he had already gone abroad. No motive is attributed to him in this regard. The appellant on his return to India and on coming to know about the death of his counsel, promptly applied for setting aside of the exparte

judgement and, thus, acted with due diligence. The principle *actus Dei ressi nocet* (the act of God prejudices no one) is, thus, fully attracted to the facts and circumstances of the present case. We are, therefore, satisfied that there exists “sufficient cause” for condonation of delay in filing the appeal.

(Para 6)

Further held, that while condoning the delay in filing of this appeal, since it has already been observed that the unfortunate demise of the counsel engaged by the appellant constitutes a “sufficient cause” for his non-appearance before the Learned Single Judge, on the same analogy the impugned judgment and decree dated 30th July, 2001 also cannot sustain. Having regard to the nature of list but without going into the rival submissions made by learned counsel for the parties on merits, the first appeal preferred by the respondent before the Learned Single Judge ought to be decided afresh after hearing both the parties.

(Para 8)

Mrs. G. K. Mann, Advocate, *for the appellant*.

Sarwan Singh, Sr. Advocate with A. S. Pawar and
N. S. Rapri, Advocates, *for the respondent*.

JUDGMENT

SURYA KANT, J.

C.M. NO. 2522 OF 2002

(1) This application under section 5 of the Limitation Act, 1963 seeks condonation of delay of 248 days in filing the accompanying Letters Patent Appeal. The said appeal, in turn, has been filed against the judgment and order dated 30th July, 2001 passed by the learned Single Judge in FAO No. 3-M of 1996 whereby the respondent’s appeal against the decree of divorce, dated 19th October, 1995, granted by the Additional District Judge, Amritsar in a divorce petition filed by the appellant herein, was allowed and the divorce petition was consequently dismissed.

(2) Before adverting to the *causa sine qua-non* pleaded for condonation of delay, brief facts giving rise to this matrimonial dispute may be stated.

(2-a) The appellant was a divorcee who had obtained divorce from his first wife on 24th December, 1987. In order to solemnize second marriage, he gave an advertisement in the newspaper, The Tribune, dated 16th January, 1998 and the respondent herein having responded thereto, the marriage between them was solemnized on 6th March, 1988 at Ajnala as per Sikh religious rites. At that time, the appellant was employed as a Junior Engineer in Punjab State Electricity Board whereas the respondent was employed as a Teacher in a Government Primary School. The appellant and the respondent lived together as husband and wife till 20th April, 1989 but no child was born out of this wedlock. As the appellant's second marriage also went out of track, he instituted a petition under section 13 of the Hindu Marriage Act, 1955 for dissolution of his marriage with the respondent on the grounds of cruelty and desertion. The respondent contested the aforesaid petition and made counter-allegations. The appellant, however, did not press the allegation of 'cruelty' against the respondent but sought dissolution of the marriage on the ground of 'desertion'. The learned Additional District Judge, Amritsar,—*vide* his judgment and decree, dated 19th October, 1995, after holding that the factum of separation with an intent to bring cohabitation permanently to an end on the part of the respondent and that too without any reasonable cause and/or consent of the appellant stood established, accepted the appellant's petition and passed a decree of divorce in his favour.

(2-b) Aggrieved, the respondent preferred FAO No. 3-M of 1996 in this Court. It is an undisputed fact that when the above mentioned appeal came up for final hearing before the learned Single Judge on 30th July, 2001 the appellant remained unrepresented in person and/or through counsel. The Learned Single Judge,—*vide* his judgment, dated 30th July, 2001, allowed the respondent's appeal and after setting aside the decree of divorce, dismissed the appellant's divorce petition *ex-parte*.

(2-c) Thereafter, Civil Misc. No. 5974-CII/2002 was moved by the appellant under Order IX Rule 13 CPC for setting aside the *ex parte* judgment and order, dated 30th July, 2001, of the Learned Single Judge. In the aforesaid application, the appellant averred that :—(i) he had engaged Shri Nirmal Bans Singh Gujral Advocate, as his counsel in the appeal ; (ii) Shri Nirmal Bans Singh, Gujral, Advocate, had seriously ill and confined to bed since January, 2001 and had not been attending the High Court since then ; (iii) Shri Nirmal Bans Singh Gujral, Advocate expired on 15th September, 2001 after prolonged illness ; (iv) the appellant could not engage another

counsel at that time as he himself had gone to the United States of America by a flight of United Airlines on 13th July, 2001 ; (v) the appellant entered the airport in the night of 12th July, 2001 and left India on 13th July, 2001 ; (vi) the appellant had gone with a return-ticket, however, due to attack on the World Trade Centre in the U.S.A., the flights of the United Airlines were stopped and the appellant could reach Hong Kong on 3rd January, 2002 only through the said Airlines from where he managed to reach India on 5th January, 2002 through Kathay Pacific Airlines ; (vii) the appellant was not aware of the death of his counsel and when he came to Chandigarh on 3rd February, 2002, wife of Shri Gujral told him about the demise of Shri Gujral on 15th September, 2001 ; (viii) the appellant then engaged another counsel and upon inspection of the record on 4th February, 2002, he came to know that the afore-mentioned appeal had already been decided on 30th July, 2001 ; (ix) the appellant immediately applied for a certified copy of the judgment and also moved an application for setting aside the said *ex-parte* judgment and order. The Learned Single Judge, however,—*vide* his order, dated 4th April, 2002, dismissed the aforesaid application after observing that the counsel for the applicant (appellant herein) was heard on merits also and there was no reason for him “to take a different view”.

(3) The *ex-parte* judgment, dated 30th July, 2001, referred to above, is under challenge in this Letters Patent Appeal which has been filed along with an application under section 5 of the Limitation Act, 1963 for condonation of delay of 248 days. In the application, the appellant has reiterated that he had engaged Shri Nirmal Bans Singh Gujral, Advocate to defend him in the appeal filed by the respondent in this Court and Shri Gujral, on account of serious illness, had been confined to bed since January, 2001 and was not able to attend the court till he expired on 15th September, 2001 due to which the appellant remained unrepresented before the Learned Single Judge on 30th July, 2001. It is also averred that the appellant had no knowledge of the passing of the impugned judgment and order and, thus, has a “sufficient cause” for not preferring the appeal “within the prescribed limitation period”.

(4) Notice of this application was given to the respondent who has contested the same by way of her reply-affidavit, dated 7th November, 2003. In para 4 of the said affidavit, the respondent does not dispute the fact that the appellant had engaged Shri Nirmal Bans Singh Gujral, Advocate in the first appeal or that Shri Gujral remained sick till he

expired on 15th September, 2001. In fact, the respondent has candidly admitted that, "Shri Nirmal Bans Singh Gujral, Advocate remained sick for several years and who expired on 15th September, 2001. His work was being looked after by his junior. Even otherwise, it was the duty of the appellant to have pursued the case if his counsel was sick".

(5) Section 5 of the Limitation Act, 1963 empowers the appellate court to admit an appeal after the prescribed period if the appellant satisfies the Court that he had "sufficient cause for not preferring the appeal within such period". The expression "sufficient cause", has received a liberal construction so as to advance substantial justice when no negligence or inaction or want of *bona fide* is imputable to a party. It has been held that the Court should not take a pedantic or hyper-technical view of the matter and the explanation furnished by a party to show "sufficient cause" should not be rejected when stakes are high and/or arguable points of facts and law are involved, causing enormous loss and irreparable injury to the party against whom the lis terminates either by default or inaction and deprives such party to have the decision on merits. It has also been held that acceptance of explanation furnished by a party to show "sufficient cause" should be the 'rule' and the refusal an 'exception', more so, when no negligence or inaction or lack of *bona fide* is shown. However, the Court cannot lose sight of the fact that by not taking steps within the time prescribed, a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine manner. There cannot, thus, be a strait-jacket formula for accepting or rejecting the explanation furnished for the delay caused in taking steps as it will always depend upon facts of each case. (Ref : (i) **Sita Ram Ram Charan versus M. N. Nagarshama (1)** ; (ii) **Ram Lal versus Rewa Coalfields Ltd. (2)** ; (iii) **Ram Nath Sao alias Ram Nath Sahu and others versus Gobardhan Sao and others (3)** ; and (iv) **Apangashu Mohan Lodh versus State of Tripura, (4)**).

(6) Considering the facts and circumstances of the present case in the light of above quoted principles, we find that the appellant having engaged a counsel to represent him in the first appeal cannot be accused of inaction or acting in a negligent manner. Similarly,

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- (1) AIR 1960 S.C. 260
 - (2) AIR 1962 S.C. 361
 - (3) AIR 2002 S.C. 1201
 - (4) AIR 2004 S.C. 267

there is nothing on record to suggest that he remained wilfully absent from court when the first appeal ripened for hearing or he deliberately wanted to prolong the matter. The appellant, while going abroad, could not have possibly visualized about serious illness of his counsel in near future and that too of a fatal degree. Though the respondent has averred in her affidavit that Shri Gujral's "junior" used to attend the former's cases, however, the averment is too vague to be relied upon as no particulars of the junior and/or the cases attended to by him on behalf of Shri Gujral, are disclosed. The appellant's non-appearance in person on 30th July, 2001 when the respondent's appeal was taken up for hearing, also appears to be beyond his control as he had already gone abroad. No motive is attributed to him in this regard. The appellant on his return to India and on coming to know about the death of his counsel, promptly applied for setting aside of the *ex parte* judgment and, thus, acted with due diligence. The principle *actus Dei resisi nocet* (the act of God prejudices no one) is, thus, fully attracted to the facts and circumstances of the present case. We are, therefore, satisfied that there exists "sufficient cause" for condonation of delay in filing the appeal.

(7) Consequently, the application is allowed and delay of 248 days in filing of the appeal is hereby condoned.

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(8) With the consent of Learned Counsel for the parties, we have heard them on merits as well. As pointed out earlier, the appellant remained unrepresented before the Learned Single Judge and the respondent's appeal has been allowed *ex parte*. While condoning the delay in filing of this appeal, since it has already been observed that the unfortunate demise of the Counsel engaged by the appellant constitutes a "sufficient cause" for his non-appearance before the Learned Single Judge, on the same analogy the impugned judgment and decree, dated 30th July, 2001, also cannot sustain. Having regard to the nature of list but without going into the rival submissions made by learned counsel for the parties on merits, we are of the view that the first appeal preferred by the respondent before the Learned Single Judge ought to be decided afresh after hearing both the parties.

(9) Accordingly, we set aside the impugned judgment and order, dated 30th July, 2001, and remit the matter to the Learned Single Judge for readjudication of the respondent's appeal.

(10) No order as to costs.

(11) The parties are directed to appear before the Learned Single Judge on 30th March, 2006.

R.N.R.