



2025:DHC:3978-DB



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Date of decision: 16.05.2025*

+ MAT.APP.(F.C.) 19/2025 & CM APPL. 2228/2025

**DHIRENDRA PRASAD**

.....Appellant

Through: Mr.Yash Harshvardhan, Ms.  
Pankhuri Srivastava, Ms.  
Anukriti Tiwari, Mr.Pradeep  
Singh Negi, Mr.Suhail Khan  
and Mr. Deepen Kumar, Advs.

versus

**BABY DEVI**

....Respondent

Through: Mr. Rajmangal Kumar and  
Ms. Sangeeta Kumari, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**HON'BLE MS. JUSTICE RENU BHATNAGAR**

**RENU BHATNAGAR, J. (Oral)**

1. The present appeal under Section 19 of the Family Courts Act, 1984, (hereinafter referred to as, 'Family Court Act') read with Order XLIII Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as, 'CPC') has been filed by the appellant, challenging the Order dated 11.11.2024 passed by the learned Principal Judge, Family Courts, Saket, New Delhi, (hereinafter referred to as, 'Family Court'), in an application being Misc Civ No. 11/2024 filed in HMA 610/2019, titled *Dhirendra Prasad Gupta v. Baby Devi*, allowing the said application filed under Order IX Rule 13, and consequently, recalling



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the Judgment and Decree of divorce dated 01.04.2022 passed in HMA No. 610/2019 and restoring the said Divorce Petition filed by the appellant herein.

2. It is contended by the learned counsel for the appellant that the application for setting aside the *ex parte* Judgment and Decree of Divorce dated 01.04.2022 was filed by the respondent with a delay of more than 297 days, even though she was residing in her matrimonial ancestral house of the appellant and had regularly been in touch with the appellant, his family members and their acquaintances. It is further contended that the respondent is solely enjoying the usufruct of the agricultural land of the appellant, which land she wants to get transferred in her name by exerting pressure. It is further contended that none of the grounds taken by the respondent in her application is correct, and she failed to produce any documents about her alleged hospitalization, which disproves her claim of being ill. It is further contended that it is hard to believe that the earlier engaged counsel of the respondent would have misinformed her, which has been refuted by the said counsel as well.

3. It is contended that the respondent was initially regularly appearing in the divorce petition filed by the appellant, and had also filed her written statement. It is submitted that even the issues were framed, and the matter had proceeded to the stage of recording the appellant's evidence. It is contended that even during the COVID-19 pandemic as well, she was being represented through her counsel or his associate. It is urged by the learned counsel for the appellant that in fact, the respondent did not appear before the learned Family Court



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later, just to intentionally delay the proceedings.

4. It is stated that more than 13 litigations have been filed by the respondent against the appellant and his family in Bihar as well as in Delhi, which disproves her claim that she is a rustic villager and therefore, was unaware of the status of the divorce petition. It is contended that the respondent has intentionally chosen not to challenge the *ex parte* Judgment and Decree of divorce for 297 days, and the appellant, in the meantime, performed a second marriage. It is contended that the learned Family Court has failed to take all these facts into proper consideration.

5. The learned counsel for the appellant has relied upon various judgments as cited in the memorandum of appeal, alleging that there was no sufficient cause for setting aside the *ex parte* decree.

6. On the other hand, the learned counsel for the respondent contends that the respondent was misinformed by her previous counsel that the case had been closed and that her appearance was no longer required. Relying on this advice, the respondent did not make any effort to ascertain the status of the case, which ultimately resulted in the passing of the *ex parte* Judgment and Decree of divorce. He submits that the respondent is educated only up to Class V<sup>th</sup> and is a rustic villager, for whom it was difficult to travel to Delhi frequently due to the heart ailment of her father who required regular check-ups. He further submits that the respondent herself fell ill and, in support of this contention, she had filed her medical documents before the learned Family Court, which were rightly taken into consideration. He informs that the respondent has already lodged a complaint against her



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previous counsel with the Bar Council of Delhi, and submits that when the respondent got to know of the *ex parte* Divorce Decree from the relatives of the appellant, she came to Delhi and obtained a certified copy of the judgment, however, due to her ill health, she could not challenge the same within the prescribed time. He submits that it was only after her recovery, that the respondent engaged a new counsel and filed the application mentioned hereinabove for setting aside the *ex parte* Judgment and Decree of divorce, which has been rightly allowed by the learned Family Court.

7. We have heard the submissions made by the learned counsels for the parties and have perused the Impugned Order as well as the record.

8. At the outset, we would note that we had a personal interaction with the parties to explore a possibility of them arriving at an amicable settlement. However, such endeavour failed as both the parties stuck to their respective stand. We, therefore, proceeded to decide this appeal on merit.

9. In the present case, the marriage between the appellant and respondent was solemnized on 13.03.2008, and out of the said wedlock, a female child was born, who is at presently residing with the respondent. It is claimed by the appellant that the respondent and her daughter are residing in the appellant's ancestral house, consisting of 14 rooms, and that she is also enjoying the usufruct of the agricultural land belonging to the appellant and his family.

10. Admittedly, there is a long history of litigations filed by the parties against each other. The respondent has filed several cases



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against the appellant in Patna, Motihari, and Delhi. Similarly, the appellant had earlier filed two divorce petitions against the respondent in Patna, however, the same were dismissed in default. Thereafter, the appellant filed the above divorce petition, that is HMA 610/2019, in Delhi, wherein, *vide* Judgment dated 01.04.2022, the learned Family Court passed an *ex parte* Decree of divorce in favour of the appellant.

11. In the said divorce petition, the respondent appeared and filed her written statement on 07.03.2020. Thereafter, issues were framed, and the matter proceeded for evidence of the appellant as well as for arguments on the application filed by the respondent under Section 24 of the Hindu Marriage Act, 1955 (hereinafter referred to as, 'HMA'). However, on account of the COVID-19 pandemic, the cases were adjourned *en bloc*. Even during this intervening period, on 07.10.2021, the proxy counsel for the respondent had appeared virtually. The matter was then adjourned to 10.01.2022. On the said date, no adverse orders were passed due to the COVID-19 pandemic, and the case was further adjourned to 22.03.2022 for recording the evidence of the appellant and for hearing arguments on the *interim* maintenance application.

12. On 22.03.2022, the respondent did not appear, and accordingly, she was proceeded against *ex parte*. Thereafter, upon recording the appellant's evidence and hearing the final arguments, the learned Family Court passed an *ex parte* Judgment and Decree of divorce. Aggrieved thereby, the respondent filed the aforesaid application under Order IX Rule 13 of the CPC, which was allowed by the Impugned Order and the same is now under challenge before this



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Court.

13. One of the grounds taken by the respondent for seeking setting aside the *ex parte* Judgment and Decree of divorce was that her previously engaged counsels, namely, Sh. Rakesh Kumar Tiwari, and Sh. Tarun Kumar Advocates, did not inform her about the status of the case and, instead, misinformed her father that the matter had been closed and there was no need to pursue it further. Before the learned Family Court, the respondent-wife had filed the copy of her complaint dated 25.01.2024 addressed to the Bar Council of Delhi against her previously engaged Counsel, namely, Sh. Rakesh Kumar Tiwari, Advocate. The learned Family Court had taken on record the said complaint alleging misconduct on the part of the counsel, as the same was necessary for considering the stand taken by the respondent in her application for setting aside the *ex parte* Judgment and Decree of divorce.

14. Admittedly, the respondent is a simple, rustic lady who stays in a village in the State of Bihar along with her daughter. She has also stated that when she came to know about the *ex parte* Decree of divorce, she came to Delhi and applied for a certified copy of the Judgment and Decree of divorce. Once she obtained the same, she was unable to challenge the same due to her ill health during the period between 30.01.2023 and 05.02.2023, and she got herself treated at the Lady Hardinge Hospital. Post recovery, she filed an application under Order IX Rule 13 of the CPC. The copies of the medical records were filed before the learned Family Court, and the same were duly considered and relied upon by the learned Family Court. Though, the



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learned counsel for the appellant submits that these medical documents and even the online record of the hospital does not show that the respondent was admitted in the above named hospital, we do not find that anything turns on that. The documents do show the respondent to be under treatment in the said hospital.

15. The respondent has also taken the stand before the learned Family Court that due to the heart ailment of her father, who required regular medical checkups, it was not possible for her to travel to Delhi frequently, and she had to depend upon her counsel, who misinformed her.

16. It is a settled principle of law that no person should be made to suffer due to the misconduct or negligence of their counsel.

17. Admittedly, the respondent was duly contesting the divorce petition before the learned Family Court by filing a written statement, also filing the application for grant of maintenance under Section 24 of the HMA, and pursuing the same through her counsel. As disclosed during the course of arguments in the present appeal, the respondent has also taken recourse to other legal proceedings against the appellant in Delhi as well as in Patna, and is duly contesting the same. Therefore, we do not find any force in the submission of the learned counsel for the appellant that the respondent intentionally did not appear in the divorce case.

18. Keeping in view the fact that the respondent is a rustic villager, and is just a V<sup>th</sup> Class pass, who was also misinformed by her previous counsel, the reasons cited by her before the learned Family Court for her non-appearance are found to be sufficient.

