



2026:DHC:915-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 02.02.2026***

+ MAT.APP.(F.C.) 313/2025

RICHA SONI

.....Appellant

Through: Mr. R.D. Singh, Mr. Vibhuti
Zibbu, Advs.

Versus

UTKARSH SONI

.....Respondent

Through: Mr. Raj Kumar Solanki, Advocate.

CORAM:**HON'BLE MR. JUSTICE VIVEK CHAUDHARY****HON'BLE MS. JUSTICE RENU BHATNAGAR****RENU BHATNAGAR, J. (ORAL)**

1. The present appeal has been filed under Section 19(1) of the Family Courts Act, 1984 assailing the Order dated 23.07.2025 (hereinafter referred to as "Impugned Order") passed in M.Civ No. 66/2022 titled as *Utkarsh Soni Vs. Richa Soni* vide which the Application under Order IX Rule 13 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as the "CPC") filed on behalf of the Appellant/wife for setting aside the *ex-parte* Judgment and Decree of Divorce dated 31.05.2022 passed in HMA No. 301/2022 has been dismissed.

2. The brief facts in which the present appeal arises are that the Appellant and the Respondent got married on 14.06.2011 at Ajmer, Rajasthan, in accordance with Hindu rites and ceremonies. Owing to



matrimonial discord, the Respondent instituted a petition for divorce in the year 2018 before the competent Court at Ujjain, Madhya Pradesh. On an application filed by the Appellant seeking transfer of the said proceedings, the Supreme Court ordered transfer of the divorce petition to the Family Court, North District, Rohini, Delhi (hereinafter referred to as “Family Court”), where it was registered as HMA No. 301/2022.

3. Admittedly, on 04.03.2022, the Appellant appeared before the learned Family Court along with her counsel and filed a vakalatnama. However, due to her non-appearance on 28.04.2022, the matter was proceeded *ex-parte* against the appellant, whereafter, an *ex-parte* Judgment and Decree of Divorce was passed on 31.05.2022 by the learned Family Court.

4. The Appellant, thereafter, filed an application under Order IX Rule 13 CPC seeking setting aside of the said *ex-parte* judgment and decree, which was dismissed *vide* Impugned Order dated 23.07.2025, by the learned Family Court, which order is under challenge before us.

5. Learned counsel for the Appellant submits that the Learned Family Court completely failed to appreciate the bona fide conduct of the Appellant. The Appellant herself had approached the Supreme Court seeking transfer of the divorce proceedings from Ujjain to Delhi and had duly appeared before the learned Family Court on 04.03.2022 along with her counsel and filed a vakalatnama, clearly showing her intention to contest the proceedings. The subsequent non-appearance on 28.04.2022, 28.05.2022 and 31.05.2022 occurred solely due to the



negligent, callous, and unprofessional conduct of her earlier counsel, who neither informed the Appellant of the next date of hearings nor responded to her phone calls.

6. He submits that the Impugned Order reflects non-consideration of material facts. The observation that the Appellant took no steps between 04.03.2022 and 25.07.2022 is incorrect, as she had pleaded that her counsel was avoiding her phone call and was unreachable, which prevented her from pursuing the matter.

7. Lastly, it is asserted that the *ex-parte* Judgment and Decree of Divorce dated 31.05.2022 was passed in an unduly hasty and mechanical manner, within merely two effective dates of hearing, without affording the Appellant a real and meaningful opportunity of being heard and in view of the settled law under Order IX Rule 13 CPC, the impugned order deserves to be set aside to prevent miscarriage of justice.

8. Per contra, Learned counsel for the Respondent submits that the appeal is devoid of merit as the Appellant failed to establish any “sufficient cause” within the meaning of Order IX Rule 13 CPC. The record clearly demonstrates that the Appellant had full knowledge of the proceedings and the next date of hearing fixed as 28.04.2022, having appeared in person with counsel on 04.03.2022 when the date was announced in open court. The Appellant’s continued pattern of non-appearance both in the divorce proceedings and in her own petition under Section 9 of the Hindu Marriage Act, 1955 (hereinafter referred to as, ‘HMA’) establishes deliberate default rather than



accidental absence.

9. Further, it is submitted that the impugned order rejecting the application under Order IX Rule 13 CPC reflects a sound and reasoned exercise of judicial discretion, based on detailed consideration of pleadings, conduct of the Appellant, and binding precedents. The learned Family Court correctly held that the *ex-parte* decree was not passed in haste, but after prolonged pendency of proceedings since 2018 and repeated opportunities afforded to the Appellant.

10. It is submitted that the present appeal is just an attempt to reopen the concluded proceedings and is liable to be dismissed.

11. We have considered the submissions made by the learned counsel for the parties.

12. Before deciding the rival submissions, it is necessary to note the relevant provisions of Order IX Rule 13 of the CPC which is reproduced herein below-

“

Order IX

13.Setting aside decree ex parte against defendant.—In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:



Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:

[Provided further than no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.]

[Explanation.—Where there has been an appeal against a decree passed ex parte under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that ex parte decree.]”

(emphasis added)

13. The principal question that arises for consideration before this Court is whether the Appellant was able to demonstrate “sufficient cause” within the meaning of Order IX Rule 13 CPC for setting aside the *ex-parte* Judgment and Decree of Divorce dated 31.05.2022.

14. The case of the Appellant is that she acquired knowledge of the *ex-parte* decree only on 25.07.2022, upon engaging a new counsel who inspected the record and informed her of the decree. It is further her case that her non-appearance before the learned Family Court was occasioned due to the failure of her erstwhile counsel to apprise her of the subsequent dates of hearing.

15. This Court, however, finds that the said explanation, by itself, is not wholly convincing. The record clearly reflects that the Appellant,



along with her counsel, was personally present before the learned Family Court on 04.03.2022, when the divorce petition filed by the Respondent was directed to be listed along with the Appellant's own petition under Section 9 of the Hindu Marriage Act, and the next date of hearing was fixed as 28.04.2022. In view of her personal presence on the said date, there was no occasion for the erstwhile counsel to separately inform the Appellant about the next date of hearing.

16. Further, the Appellant has not placed on record any contemporaneous material to corroborate her plea of negligence on part of her erstwhile counsel or her counsel being non-responsive to her phone calls. There are no call detail records, correspondence, or complaint lodged before any authority alleging professional misconduct against the erstwhile counsel. The plea of non-communication, therefore, remains unsubstantiated.

17. As regards the contention that the learned Family Court acted with undue haste in granting the *ex-parte* decree, within two effective dates of hearing, this Court finds merit in the observation recorded in the impugned Order that the proceedings had been pending before the learned family court since the year 2018. The learned Family Court exercised its discretion to proceed with the matter after the Appellant was proceeded *ex-parte* on 28.04.2022, posted the matter for evidence of the respondent/husband for 28.05.2022, on which date, evidence was concluded, and final arguments were heard. The case was then posted for judgment on 31.05.2022 when the *ex-parte* Judgment and Decree was passed. The Appellant and her counsel remained absent on



all these dates. Thus, the *ex-parte* decree cannot be said to have been passed in a mechanical or arbitrary manner or in haste.

18. Though we do not find any merit in the reasons of non-appearance of the Appellant on the date when she was proceeded *ex-parte* and thereafter also, yet it emerges from the Family Court Record that the Appellant defaulted in appearance only on two occasions, namely on 28.04.2022 and 28.05.2022, whereafter the *ex-parte* decree of divorce came to be passed on 31.05.2022. Admittedly, prior to that she was duly contesting the case before the learned Family Court at Ujjain, Madhya Pradesh, and also appeared before the learned Family Court at Delhi when the matter was transferred by the Apex Court from Ujjain, on her application for transfer. Admittedly, she was also pursuing her petition under Section 9 of the HMA simultaneously. Accordingly, having regard to the nature of the litigation, the serious civil consequences flowing from a decree of divorce, and the settled principle that matrimonial disputes ought to be decided on merits rather than on technical defaults, this Court is of the view that the Appellant deserves one reasonable and meaningful opportunity to contest the proceedings.

19. Accordingly, adopting a balanced and lenient approach, this Court is inclined to set aside the impugned order as well as the *ex-parte* judgment and decree, subject to the Appellant compensating the Respondent by way of costs.

20. For the foregoing reasons, the appeal is allowed. The order dated 23.07.2025 and the *ex-parte* Judgment and Decree dated



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31.05.2022 passed by the learned Family Court are set aside. The matter is remanded to the learned Family Court for fresh adjudication on merits, subject to the Appellant paying costs of ₹25,000/- to the Respondent within a period of four weeks from the date of this Order.

21. Parties are directed to appear before the learned Family Court on 15.03.2026.

22. In the above said terms, the appeal along with pending applications, if any, stands disposed of.

VIVEK CHAUDHARY, J

RENU BHATNAGAR, J

FEBRUARY 2, 2026/p/KZ/nc