



2025:DHC:8583-DB



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

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Date of Decision: 24.09.2025

+ MAT.APP.(F.C.) 349/2025

SARIKA TALWAR

.....Appellant

Through: Mr. Sanjeev Mahajan and Ms.
Simran Rao, Advs.

versus

SIDDHARTH TALWAR

.....Respondent

Through: Ms. Zeba Khair, Adv. with
Respondent in-person (through
VC).**CORAM:****HON'BLE MR. JUSTICE ANIL KSHETARPAL****HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR****J U D G M E N T (O R A L)****ANIL KSHETARPAL, J.**

1. The present Appeal has been filed by the Appellant assailing the correctness of the orders dated 13.10.2023 and 17.12.2024 passed by the Family Court, Patiala House Courts, New Delhi, in Miscellaneous Application Nos.03/23 and 19/24, respectively, in HMA No.194/2019 captioned *Siddharth Talwar vs. Sarika Talwar*.

2. By the order dated 13.10.2023, an Application filed under Order IX Rule 13 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"], to set aside the order dated 20.03.2021 (by which the defence of the Appellant was struck off), the *ex-parte* order



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dated 04.04.2022 and judgment dated 22.12.2022, was dismissed in default by the learned Family Court for want of prosecution.

3. Another application, being Miscellaneous Application No.19 of 2024, was filed by the Appellant seeking to set aside the order dated 13.10.2023 and for restoration of Miscellaneous Application No.03 of 2023. However, the application was also dismissed *vide* order dated 17.12.2024.

4. In order to comprehend the issue involved in the present Appeal, it is apposite to refer to the relevant facts in brief. On 18.02.2019, the Respondent filed a petition for dissolution of marriage on the grounds of cruelty and desertion under Sections 13(1) (ia) and (ib) of the Hindu Marriage Act, 1955 [hereinafter referred to as "HMA"], before the Family Court. In the said petition, Notice was issued to the Appellant, which was duly served, and she appeared through her advocate, namely, Mr. Tarique Naseem.

5. However, as Mr. Tarique Naseem failed to appear on behalf of the Appellant, the learned Family Court issued a fresh Notice. Subsequently, the Appellant engaged Mr Atul Verma, Advocate, to represent her in the divorce proceedings.

6. On 20.03.2021, her defence was struck off, and *ex parte* proceedings were initiated against her by the Family Court *vide* order dated 04.04.2022, as neither she nor her counsel appeared in the divorce proceedings. Thereafter, the Appellant filed an application to set aside the *ex parte* proceeding; however, the same was dismissed on



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the ground that the judgment in the divorce petition had already been pronounced on 22.12.2022.

7. Subsequently, she filed Miscellaneous Application under Order IX Rule 13 of the CPC through the office of Mr. Amit Budhiraja, Advocate. The said application was also dismissed for non-prosecution *vide* order dated 13.10.2023, as neither she nor her counsel appeared before the Family Court.

8. Thereafter, the Appellant remained inactive for a period exceeding six months and eventually, on 25.04.2024, she filed an application, being Miscellaneous Application No.19/2024, under Section 151 of the CPC for restoration of Miscellaneous Application No.03/2023, which was dismissed for non-prosecution by the Family Court on 17.12.2024.

9. Learned counsel representing the Appellant has advanced the following submissions:

- i. The office of Mr. Amit Budhiraja did not inform the Appellant about the dismissal of Miscellaneous Application No.03/2023 for non-prosecution *vide* order dated 13.10.2023 passed by the learned Family Court;
- ii. The Appellant could not engage another counsel due to financial constraints; and
- iii. The Appellant has not been paid maintenance.

10. *Per contra*, learned counsel representing the Respondent submits that the Appellant does not face any financial constraints. She



asserts that the Appellant is a graduate and is working as a Fashion Designer.

11. It is further stated that the Appellant has been actively pursuing her complaint under the Protection of Women from Domestic Violence Act, 2005 [hereinafter referred to as “PWDV Act”], as well as the FIR registered under Section 498A of the Indian Penal Code, 1860. Further, it is pointed out that the Appellant has also been contesting the challenge made by the Respondent to the order of interim maintenance granted in the proceedings under the PWDV Act.

12. This Court has heard the learned counsel representing the parties and, with their able assistance, perused the paper book.

13. A perusal of the record indicates that the Appellant did not file an application under Section 5 of the Limitation Act, 1963 [hereinafter referred to as “Limitation Act”], seeking condonation of delay in filing Miscellaneous Application No.19/2024 for restoration, as the said application was filed after a period of more than six months. Even if the contents of the Miscellaneous Application No.19/2024 are taken into account, there is no explanation for the Appellant’s inaction from 13.10.2023 to 25.04.2024. Paragraph Nos. 4, 5, 6 and 7 of the said application read as under:

“4. It is submitted that the non-appearance of the counsel for the Applicant was on account of reasons beyond the control of the Applicant, and the Applicant and her young daughter should not be made to suffer on account of the same.

5. It is further submitted that the Applicant herein is seeking opportunity to defend and put forth her case before this Hon’ble Court in order to controvert and contest the allegations of the Non-Applicant/husband. It is a settled principle of law that a party has to stand on his own legs to prove the ground of divorce, even if the other



party is ex parte. In the present case, the Non-Applicant has not proved its case and has been granted divorce as his allegations have remained uncontested. It is humbly submitted that the Applicant may be granted the opportunity to contest the allegations of the husband and prove that the case of the Non-Applicant/husband is false and baseless.

6. It is submitted that Order dated 22.12.2022 has a life altering impact on the Applicant as well as the life of the daughter of the Applicant and Non-Applicant. It is most humbly submitted that the present case being a case involving a school going child, a lenient view of the matter may be taken.

7. It is submitted that the Applicant herein is not negligent in pursuing the legal proceedings which are pending before various for a such as the Hon'ble High Court as well as the Court of the Metropolitan Magistrate at Tis Hazari. The Applicant has been diligently and to the best of her ability following up on all cases, thus, the Applicant had no intention whatsoever to not pursue the miscellaneous application before this Hon'ble Court."

14. As per Section 141 of the CPC, the procedure prescribed under the CPC for the suits shall be followed in the miscellaneous proceedings. The application for restoration of proceedings under Order IX Rule 13 of the CPC was required to be filed within a period of 30 days from the date of dismissal for non-prosecution. However, neither a separate application under Section 5 of the Limitation Act has been filed nor has the Appellant provided any cogent reason to enable this Court to condone the delay in filing the application for restoration.

15. It is evident that the decree for divorce was granted nearly three years ago, after the proceedings for the grant of a decree of divorce remained pending for more than three years. The conduct of the Appellant throughout reflects a consistent reluctance to diligently defend the case.



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16. Furthermore, the Appellant has engaged as many as four counsels to represent her before the learned Family Court at various stages of the divorce proceedings. At the initial stage, she was represented by Mr. Tarique Naseem, Advocate, followed by Mr. Atul Verma, Advocate. Subsequently, Miscellaneous Application No.03/2023 was filed through the office of Mr. Amit Budhiraja, Advocate, and Miscellaneous Application No.19/2024 was filed through Mr. Mayank Bamniyal, Advocate. Notably, at no point did the Appellant approach the Legal Services Authority or any other social welfare agency for legal assistance. In view of the above, the contention that the Appellant is suffering from financial constraints is not sustainable.

17. In light of these circumstances, this Court does not find it appropriate to interfere with the orders passed by the Family Court.

18. The present Appeal is accordingly dismissed.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

SEPTEMBER 24, 2025

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