

Ashok Kumar Sharma Vs. Shashi Bala

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Court : Delhi

Decided On : Apr-21-2010

Judge : Sanjiv Khanna, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Section 125

Appeal No. : Crl.Rev.P. 625/2008 and Crl.M.A. No. 13359/2008 (for delay)

Appellant : Ashok Kumar Sharma

Respondent : Shashi Bala

Advocate for Pet/Ap. : Jyotika Kalra and; Sanjay Jha, Advs.

Judgement :

ORDER

Sanjiv Khanna, J.

1. Respondent was served by publication but has not entered appearance. She is accordingly proceeded ex parte.

2. Petitioner claims that the respondent and the petitioner separated and an ex parte decree of divorce was passed by District Judge, Rajouri (Jammu) on 23rd September, 1987.

3. Subsequently on or about 24th November, 2004, the respondent filed a petition under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Code for short). In the said petition, there is no reference to decree of divorce and the petitioner has been described as her husband. It is further stated that the respondent was residing with her mother who expired in October, 1999 and the said respondent has been living on the mercy of her brothers and sisters and thereafter with some other relatives.

4. The petitioner was served in that petition and had entered appearance through his lawyer, Mr. M.A. Khan, advocate. However, no reply to the petition was filed and the petitioner and his lawyer stopped appearing. By Order dated 22nd November, 2005 the petitioner was proceeded ex parte and by ex-parte Order dated 28th January, 2008, the petitioner was directed to pay maintenance of Rs. 4000/- p.m. from the date of the said Order. Another direction was issued to the petitioner herein to pay Rs. 2500/- to the respondent towards litigation expenses.

5. The petitioner thereafter filed an application for setting aside of the ex parte order which has been dismissed vide Order dated 30th July, 2008.

6. Both Orders dated 28th January, 2008 and 30th July, 2008 have been impugned in the present Revision Petition.

7. It is pointed out by the learned Counsel for the petitioner that the delay in impugning Order dated 28th January, 2008 has arisen on account of the fact that the petitioner had filed an application for setting aside of the ex parte order. In view of the said explanation, delay in filing of the Petition against the Order dated 28th January, 2008 is condoned.

8. There appears to be some lapse on the part of the petitioner in not following up the petition under Section 125 of the Code, filed by the respondent after he was served and had entered appearance in January 2005. Due to non-appearance, the petitioner was proceeded ex parte on 22nd November, 2005 and ex parte judgment was passed on 28th January, 2008. There is a gap of nearly two years between the two dates. It appears that the petitioner did not get in touch with his lawyer during this period.

9. It is stated that the mother of the petitioner was suffering from cancer and expired in October, 2007. It is also stated that the petitioner is a resident of Jammu & Kashmir and it was not possible for the petitioner to repeatedly come to Delhi. Learned Counsel for the petitioner further states that the petitioner will deposit an amount of Rs. 35,000/- before the Trial Court within one month from today without prejudice to his rights and contentions.

10. In view of the aforesaid facts and the statement made by the learned Counsel for the petitioner in Court today, the impugned Order dated 30th July, 2008 is set aside and accordingly the application filed by the petitioner for setting aside of the ex parte Order dated 22nd November, 2005 is allowed. However, in case the petitioner does not make payment of Rs. 35,000/- within one month, the impugned Order dated 30th July, 2008 shall be implemented and executed. Rs. 35,000/- will be released and paid to the respondent on her entering appearance before the learned Metropolitan Magistrate subject to final outcome of the Petition.

11. The petitioner will appear before the learned Metropolitan Magistrate on 10th May, 2010. Notice, if required, will be issued to the respondent by the learned Metropolitan Magistrate.

12. The Revision Petition is accordingly disposed of.