

(2006) 12 AHC CK 0128

Allahabad High Court

Case No: Criminal Revision No. 2218 of 2002

Satya Narain Gaur

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

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**Date of Decision:** Dec. 1, 2006**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 125

**Citation:** (2007) 2 ACR 1585**Hon'ble Judges:** V.D. Chaturvedi, J**Bench:** Single Bench**Advocate:** K.K. Mani, for the Appellant; R.K. Chaubey and Sunil Kumar Srivastava, A.G.A., for the Respondent**Final Decision:** Allowed

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**Judgement**

V.D. Chaturvedi, J.

This criminal revision has been filed against the order dated 23.9.2002 (passed in Misc. Case No. 39 of 2000) whereby the learned Judge, Family Court, Gorakhpur rejected the revisionist's application to set aside the ex parte judgment (dated 12.10.2001) passed in Case No. 146 of 1999, Smt. Anita v. Satya Narain Gaur.

2. The relevant facts are briefly that Respondent No. 2 Smt. Anita filed a petition u/s 125, Cr. P.C. for maintenance allowance against her husband Satya Narain Gaur (revisionist). The notices in these proceedings were sent to the revisionist which came back with the endorsement that he had gone in his relationship. The registered notices were sent again but those were never received back. Hence an order dated 20.4.2001, to proceed ex parte, was passed and the case proceeded ex parte. After the arguments were over, the revisionist appeared and moved an application to set aside the order dated 20.4.2001 which was allowed on costs. The revisionist thereafter did not appear in Court hence the ex parte judgment was passed on 12.10.2001 awarding the maintenance allowance at the rate of Rs. 500

per month in favour of Smt. Anita Devi and the maintenance allowance at the rate of Rs. 150 per month to each of her two children. Thus the total amount awarded was Rs. 800 per month.

3. The revisionist moved an application dated 17.7.2002 supported by an affidavit, to set aside the ex parte judgment dated 12.10.2001 pleading that due to the efforts made by the relatives of both parties a compromise was arrived at between him (revisionist) and his wife, and resultantly both started living together from 16.9.2001 ; that the father of Smt. Anita Devi, (Respondent No. 2) assured him that he would not contest the case of Smt. Anita Devi and would get the same dismissed ; that relying upon such assurance, the revisionist did not attend the Court and left for Delhi to earn his livelihood ; that after a lapse of time the revisionist's father gave a telephonic message to the revisionist that the police reached his house and that Smt. Anita Devi had also left the revisionist's house. The revisionist, therefore, came back to his native village on 13.7.2002 and reached the Court on 15.7.2002 and 16.7.2002 and on inspection of the record he came to know regarding the ex parte judgment dated 12.10.2001.

4. The revisionist's petition dated 17.7.2002 for setting aside the ex parte judgment was dismissed on 23.9.2002 on the ground (i) that the revisionist had once put in his appearance in the case earlier and thereafter willfully absented himself and (ii) that the restoration petition was moved nine months after the date of ex parte judgment and thus the restoration petition was barred by time.

5. I have heard Sri K. K. Mani, for the revisionist and Sri R. K. Chaubey and the learned A.G.A. for the Respondents and have also gone through the record of the case.

6. The plea of the revisionist that he and his wife started living together from 16.9.2001 and that the father of his wife assured that he would get the case dismissed is, however, controverted by Respondent No. 2 in her objection filed in court below, but the probability of the revisionist's plea being true cannot be ruled out. One of the norms of the judicial system is that "It is not enough that justice has been done but it must also appear to others that justice is being done". In order to achieve the aim of the second part of the said maxim it is essential that the orders and judgments be passed after giving adequate opportunity to both the parties. While dealing with the restoration application, the outlook of the Courts must be broad and liberal but only to the extent that the party in default may not take the undue advantage of his deliberate default. The plea taken by the revisionist is convincing, hence it is appropriate ground for setting aside the ex parte judgment.

7. Literally speaking, the period of limitation for moving an application for setting aside the ex-parte order is three months from the date of such order. But it does not mean that the relief of setting aside the order is liable to be refused even to those who could not know about the ex parte order within three months from the date of

the order. This period of three months, is, therefore, liable to be reckoned from the date when the party in default came to know about the ex parte order. The revisionist stated in his application, supported by an affidavit, that on the telephonic message given by his father he reached his village on 13.7.2002 and in Court on 15.7.2002 and made inspection of the record on 16.7.2002 when he could know about the ex parte judgment dated 12.10.2001. After receiving the telephonic message from his father, the revisionist made no delay in reaching his village or in inspecting the record of the case. The revisionist came to know about the ex parte order on 16.7.2002 and thereafter he moved the application on 17.7.2002. Thus the application for restoration was moved within three months from the date of knowledge of the ex parte order. Hence the restoration application to set aside the ex parte judgment was bound to be deemed within time.

8. In view of what has been discussed above, this revision is allowed and the impugned order dated 23.9.2002 (passed in Misc. Case No. 39 of 2000) and the ex parte judgment dated 12.10.2001 (passed in Case No. 146 of 1999 Smt. Anita v. Satya Narain Gaur), are set aside subject to costs of Rs. 10,000 payable within one month and subject to the another condition that henceforth the revisionist shall regularly pay the amount of Rs. 800 per month to Smt. Anita Devi and her minor children till the disposal of Case No. 146 of 1999. This interim maintenance amount will be regularly deposited by the revisionist within first seven days of each month failing which this order would automatically stand cancelled.

Certify the judgment to the Court concerned.