

(2000) 09 MP CK 0037

Madhya Pradesh High Court

Case No: Civil Revision No. 358 of 1999

Kiran Bhasin

APPELLANT

Vs

Shyam Bhasin

RESPONDENT

Date of Decision: Sept. 18, 2000

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115

Citation: (2001) 1 DMC 56 : (2001) 1 MPJR 264

Hon'ble Judges: A.K. Mishra, J

Bench: Single Bench

Advocate: J.S.L. Sinha, for the Appellant; R.D. Agarwal, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Arun Mishra, J.

An ex-parte decree of divorce was passed against the petitioner-wife. For setting aside the same the petitioner filed M.C.C. When the date was fixed for evidence, the petitioner changed her Counsel and Vakalatnama of Mr. J.S.L. Sinha, Advocate was filed on March 13, 1999. An application was filed on behalf of the Counsel that the Counsel was having cardiac problem on the said date and was unable to pursue the case of the petitioner. Trial Court rejected the application and also closed the case as well as right of leading evidence of the petitioner on the ground that petitioner had changed certain Advocates on prior occasions and the application did not seem to be bona fide and the matter was being protracted.

Having heard the learned Counsel for the parties, I am of the opinion that the impugned order, if allowed to stand, would occasion failure of justice. An ex-parte decree of divorce has been passed against the petitioner. It is true that petitioner had changed certain Advocates but that cannot by itself be a ground to reject an

application moved by engaging another Counsel on the ground of his own ill-health. It cannot be said that the application moved by the Counsel was suffering from the vice of mala fides. Obviously he was ailing on the said date. The Trial Court ought to have fixed another date for proceeding in the matter and last opportunity ought to have been granted to the petitioner to pursue her case and lead evidence.

It is settled law that for mistake of a Counsel or for the reasons attributable to the Counsel's health a litigant should not suffer. Petitioner has done whatever she could do. Hence it cannot be said that the order passed by the Trial Court, if set aside, would occasion in failure of justice.

The impugned order is set aside. Last opportunity is granted to the petitioner to lead evidence. Parties shall keep their witnesses present on a date to be fixed by the Trial Court for that purpose. It shall be duty of the petitioner to keep her witnesses present before the Court on her own and no adjournment shall be allowed by the Trial Court. Documents which may be filed by the parties shall be taken on record by the Court while deciding the matter. In case after recording the evidence the Trial Court comes to the conclusion that the ex-parte decree deserves to be set aside, then the suit itself shall be decided within a period of six months from today. The restoration application shall be decided within two months from today. Parties are directed to bear their own costs.