

## Lalit Kumar Sharma Vs Smt, Kiran Bala Sharma @ Kirti Sharma

**Court:** Madhya Pradesh High Court

**Date of Decision:** Jan. 15, 1988

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Section 115

Contract Act, 1872 â€” Section 229

Hindu Marriage Act, 1955 â€” Section 13

**Citation:** (1993) 1 MPJR 237

**Hon'ble Judges:** B.M. Lal, J

**Bench:** Single Bench

**Advocate:** P. S. Gothwal, for the Appellant; N. P. Dubey, for the Respondent

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

B.M. Lal, J.

This revision u/s 115. C.P.C. is directed against order dated 17-7-86 passed by IV Additional Judge to the Court of District Judge, Jabalpur,

whereby in a matrimonial suit, ex-parte decree passed in favor of the husband has been set aside at the instance of the wife/non-applicant.

The short facts leading to this revision are as under : Marriage between the spouse was solemnized on 24-9-78 at Agra according to the custom

and ritis prevalent among the parties. However, the husband/applicant has filed a petition for divorce u/s 13 of the Hindu Marriage Act making

allegations against the wife that she, without any excuse, left the matrimonial home on 27-9-79 i.e., just after a year of the marriage. A perusal of

the record of the Civil Suit No 202 of 1981 (divorce proceedings) shows that the wife/non-applicant could not be served, therefore, on 5-2-82

the husband/applicant filed an application under Order 5 Rule 20 C.P.C. for substituted service. However, on 2-7-82 hamdust summons was

directed to be issued and according to the husband on 6-2-1982 she was served on her Agra address. Despite that she could not appear.

Therefore, on 12-2-1982 the Court proceeded ex parte and on 21-2-82 ex parte decree for divorce was passed in favor of the

applicant/husband.

The wife/non-applicant on 10-3-85 filed an application under Order 9 Rule 13 C.P.C. for setting aside the ex parte decree dated 26-2-82.

The trial Court by the impugned order dated 17-7-86 has set aside the said ex parte decree against which the husband/applicant has filed this

revision petition.

Shri Gothwal, learned counsel for the applicant/husband submitted two-fold arguments viz.,--

(a) That the non-applicant/wife was served on 6-7-82 and despite that she remained absent, and

(b) That on 17-5-84 the non-applicant/wife filed an application u/s 125 Cr. P.C. claiming maintenance in the Court of Magistrate First Class,

Agra. On 19-1-85 reply on behalf of the husband/applicant was filed in which it has been elaborately pleaded that ex-parte decree against the wife

was passed on 26-8-82, but despite that no application within one month from the date of reply i.e., 19-1-85 was presented for setting aside the

ex-parte decree; whereas such an application was actually filed on 18-3-85 which is hopelessly barred by time. In support thereof Shri Gothwal

submitted that in view of the provisions of Section 229 of the Contract Act, knowledge of the Agent be attributed to the knowledge of the

principal.

On the other hand, Shri N. P. Dube, learned counsel appearing for the non-applicant/wife submitted that after elaborate enquiry, the findings

reached by the trial Court is that the non-applicant was not served on 6-7-82 but the summons was served on some other lady at Agra. In this

way the hamdust notice was misused, pretending to have been served on the wife. Shri Dube further submitted that under the facts and

circumstances, provision of Section 229 of the Contract Act does not apply in the instant case.

As far as the service of notice on the wife/non-applicant on 6-7-82 is concerned, the learned trial Court after discussing the evidence on record at

length has reached the conclusion that the wife Shrimati Kiran Bala was not at all served. This finding does not suffer from any jurisdictional error,

material irregularity or illegality and therefore, it does not require further discussion.

As to the second contention raised by the learned counsel for the applicant, relating to "knowledge" of agent attributed to the knowledge of the

principal, it is necessary to discuss the provisions of Section 229 of the Contract Act, which are as under :

229. Consequences of notice given to the agent.--Any notice given to or information obtained by the agent, provided it be given or obtained in the

course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequences as if it

had been given to or obtained by the principal

This fact is not disputed that the counsel who was engaged by the wife at Agra was not engaged for conducting the proceedings of the civil suit

(divorce proceedings) pending at Jabalpur. This is also not disputed by Shri Gothwal that no pains were taken by the husband/applicant during

the proceedings under Order 9, Rule 13 CPC to prove that the knowledge attributed to the Counsel at Agra regarding the ex-parte decree passed

in the Civil suit (divorce petition) was brought to the knowledge of the wife/non-applicant at any stage This being so, the only question remains to

be answered in view of the provisions of Section 229 of the Contract Act, is whether knowledge acquired by the agent otherwise than in the

course of his employment, or under facts and circumstances which are not material to the business in respect of which he is employed, is to be

imputed to the principal.

Provisions of Section 3 of the Transfer of Property Act are pari material with the provisions of Section 229 of the Contract Act. Explanation 3 of

Section 3 of the Transfer of Property Act states that person shall be deemed to have notice of any fact, if his agent acquires notice thereof while

acting on his behalf in the course of business to which that fact is material, provided that if the agent virtually conceals the fact, the principal shall not

be charged with the notice thereof as against any person who was a party to or otherwise cognisant of the fraud. The matter in issue has been

discussed at length in Daulal Phumra v. Pheni Bhusan Mandal and another 71 CWN 31, relying upon (4) Wyllie v. Pollen (1983) L. J. 32, Equity

782 wherein it was held that--

In order to affect a principal with constructive notice of facts within the knowledge of an agent, it is necessary that the knowledge should be

derived from the same transaction.

The learned Single Judge referred Bowstead on Agency (12th Edition p 242) wherein the law on the subject has been stated in these terms :

Where any fact or circumstance, material to any transaction, business, or matter in respect of which an agent is employed, comes to his knowledge

in the course of such employment, and is of such a nature that it is his duty to communicate it to his principal, the principal is deemed to have notice

thereof as from the time when he would have received such notice if the agent had performed his duty, and taken such steps to communicate the

fact or circumstance as he ought reasonably to have taken provided that-

(a) where an agent is party or privy to commission of a fraud upon or misfeasance against his principal, his knowledge of such fraud or

misfeasance, and of the facts and circumstances communicated therewith, is not imputed to the principal, and

(b) where the persons seeking to charge the principal with notice knew that the agent intended to conceal his knowledge from the principal, such

knowledge is not imputed to the principal.

Therefore, knowledge acquired by an agent otherwise than in the course of his employment of the principal or in facts and circumstances which are

not material with the business in respect of which he is employed, is not attributed to the principal.

In *Ratansi Agriva Bhate and another v. Jaysingh Dinkarrao Rajurkar and others* AIR 1954 Nag. 348, while considering the said principal, the

Division Bench consisting of eminent Judges Hon<sup>ble</sup> Sinha C.J. and Hidayatullah J. ruled that :

The principle that the knowledge of agent must be attributed to the principal cannot be extended to a pleader engaged for another case without

proof that the pleader was authorized to act in that case. To hold otherwise would introduce much uncertainty in litigation and neglect of counsel

might without justification be attributed to the litigant.

Therefore, this doctrine has not been extended to a counsel engaged for another case without any proof that he was also authorized to act in all the

cases or both the cases

As stated earlier Shri Gothalwal, learned counsel for the applicant/ husband was fair enough to concede the fact that the divorce petition pending in

Jabalpur Court, the counsel who was engaged at Agra in proceedings u/s 125 Cr. P.C. was not authorized to act in divorce petition. This being so,

even if the entire fact about the ex-parte decree dated 26-2-82 were brought to the notice of the counsel of the wife/non-applicant appearing in

proceedings u/s 125 Cr. P.C. at Agra on 19-1-85, the same fact cannot be attributed to the wife/non-applicant.

Shri Gothalwal in support of his contention relied upon *Municipal Corporation of Delhi v. Smt. Veena Mehta and others* AIR 1977 NOC 240

(Delhi), *Hormusji K. Bhabha Vs. Nana Appa, , and Nilkantha Shidramappa Ningashetti Vs. Kashinath Somanna Ningashetti and Others, .* The

facts of the aforesaid three cases are quite distinguishable to the facts of the instant case.

In *Municipal Corporation of Delhi's* case (supra) provision of Section 229 of the Contract Act has been interpreted to the effect that if a counsel

engaged in two proceedings, knowledge obtained by the counsel in one proceeding must be attributed to the client even in other proceedings But,

such is not the situation here. In the instant case two different counsel were engaged in two different proceedings i.e., one was u/s 125 Cr. P.C. at

Agra and the other was a matrimonial suit at Jabalpur Therefore, this case has no application to the instant case.

In *Hormusji K. Bhabha's* case (supra) proposition of Order 3 Rule 4 C.P.C. has been discussed which has no material bearing with the facts of

the instant case and therefore it does not help the applicant.

Nilkantha's case (supra) is also distinguishable. It was a case under the Arbitration Act where-in it has been held that u/s 14 (2) of the Arbitration

Act, oral intimation of filing award to pleader of the party is service of notice. In this case (Nilkantha's case) there was only one proceeding and

the counsel was noticed Under those circumstances, it has been held by the Supreme Court that notice to the pleader is notice to the party. But

such is not the situation in the instant case where two different counsel were engaged in two different proceedings.

For the reasons stated above, the revision has no force and is hereby dismissed with costs. Counsel's fee Rs 350/-, if certified The parties are

directed to appear before the IV Additional Judge to the Court of District Judge, Jabalpur on 28-1-88. The Court below is directed to proceed

with the divorce petition (Civil Suit No 202 of 1981) and decide it expeditiously.