

**Reserved Judgment**

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**First Appeal No.7 of 2018**

Smt. Seema Gupta

.....Appellant

Vs.

Manoj Kumar

.....Respondent

Present:

Mr. Rajat Mittal, learned counsel for the appellant.

Mr. Bhuvnesh Joshi, learned counsel for the respondent

Reserved on: 07.10.2020

Delivered on: 03.11.2020

**Coram: Hon'ble Sudhanshu Dhulia, J.**

**Hon'ble Alok Kumar Verma, J.**

**Per: Alok Kumar Verma, J.**

By this appeal filed under Section 19 of the Family Courts Act, 1984, the appellant seeks to challenge the order dated 12.12.2017, passed by the learned Judge, Family Court, Haridwar in Misc. Case No.13 of 2017 "Smt. Seema Gupta Vs. Manoj Kumar", whereby, the application filed by the appellant, under Order 9 Rule 13 of the Code of Civil Procedure, 1908 to seek setting aside of the ex-parte Judgment and Decree dated 08.11.2016, passed by the learned Judge, Family Court, Haridwar in Original Suit No.529 of 2014 "Manoj Kumar Vs. Smt. Seema Gupta", is dismissed.

2. Brief facts of the case are that the parties were married to each other on 10.02.2003 and out of this wedlock a son was born, now aged about 16 years and is residing with his mother. Disputes

between the parties arose and the husband filed a petition for dissolution of marriage by a decree of divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. In the said petition, the wife/appellant appeared on 07.10.2015 but after that she did not appear in that case. Therefore, an ex-parte proceeding was drawn against her. The husband filed his own affidavit in the ex-parte evidence. After hearing the arguments of the husband, the ex-parte judgment and decree was passed on 08.11.2016. In order to setting aside the said ex-parte judgment and decree, an application was moved by the appellant, which was dismissed on 12.12.2017. Hence, this appeal.

3. Heard Mr. Rajat Mittal, learned counsel for the appellant and Mr. Bhuvnesh Joshi, learned counsel for the respondent.

4. The appellant submits that after her appearance in the original suit, during mediation at Haridwar, the respondent/petitioner took appellant and her brother in the belief that he would get his petition dismissed and stay happily in Haridwar.

5. Mr. Bhuvnesh Joshi, learned counsel for the respondent submitted that the appeal, filed by the appellant, is not bona fide but he has not rebutted the appellant's statement that during mediation at Haridwar, the respondent/petitioner took the appellant and her brother in the belief that he would get his petition dismiss and stay happily in Haridwar.

6. The provision of Order 9 Rule 13 of the Code of Civil Procedure, 1908 envisages two different situations. It provides for setting aside of ex-parte decree where summons have not been duly served on the defendant or where he is prevented by the sufficient cause from appearing when the suit is taken up for hearing.

7. It is well settled that “sufficient cause” in each case is a question of fact and it should be interpreted liberally. Court in considering whether a party has established sufficient cause, need not be overstrict. What constitute “sufficient cause” cannot be laid down by hard and fast rules. In **Civil Appeal No. 4669 of 2019 Bhivchandra Shankar More Vs. Balu Gangaram More**, the Hon’ble Apex Court on 07.05.2019, has held in para No.15, “It is fairly well settled law that “sufficient cause” should be given liberal construction so as to advance sustainable justice when there is no inaction, no negligence nor want of bona fide could be imputable to the appellant.”

8. A valid marriage has the sanctity of law as well as of the society. A decree for dissolution of marriage by a competent court being a judgment affecting status is a judgment in rem. Therefore, when such serious question arises, the court will have to be very cautious and vigilant in adjudication upon the matter.

9. In **Razia Begum Vs. Sahebzadi Anwar Begum & Others, 1958 AIR 886 SC**, the Hon’ble Supreme Court has laid down that when the suit involves the question of marital status of the parties, the Court should be extremely vigilant.

10. Taking into consideration totality of the circumstances, this Court is of the view that the appellant has given sufficient explanation for her non-appearance before the Family Court. According to us, the unrebutted explanations offered by the appellant are bonafide and deserve to be accepted. Its non-acceptance by the court below does not seem to be justified.

11. Therefore, in the extraordinary and peculiar circumstances of the case, the appeal is allowed. The order dated 12.12.2017, passed in Misc. Case No.13 of 2017 “Smt. Seema Gupta Vs. Manoj Gupta”, dismissing the appellant’s application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 is set aside. The

application under Order 9 Rule 13 of the C.P.C., filed by the appellant, is accepted and the ex-parte Judgment and Decree dated 08.11.2016, passed by the learned Judge, Family Court, Haridwar in Original Suit No.529 of 2014 “Manoj Kumar Vs. Smt. Seema Gupta” is set aside. The matter is remitted back to the Family Court concerned. The parties are directed to appear on 10.11.2020 before the court concerned.

**(Alok Kumar Verma, J.)**                      **(Sudhanshu Dhulia, J.)**  
31.10.2020

Sanjay