IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO OF 2025
(@SLP (C) No.21693/2025)

JYOTSNA KANOONGO ..... APPELLANT

VERSUS

SHAILENDRA KANOONGO ..... RESPONDENT

O R D E R

1. **Leave granted.**

2. **Having heard the learned counsel appearing for the parties, it would emerge from the records that marriage between the parties was solemnized on 15.02.2002 and out of wedlock a son was born. On account of some matrimonial discord the respondent-husband claims to have issued a notice on 15.07.2009 calling upon the petitioner-wife herein to dissolve their marriage by mutual consent. Though petitioner exhibited her intend to resolve the issues that have cropped up between the parties, respondent is said to have filed a petition for divorce R.C.S. No.12-A/09 under Section 13 of Hindu Marriage Act, 1955 at Khandwa, Madhya Pradesh without her knowledge.**

3. **The trial court having ordered issuance of summons, both by ordinary summons and also by registered post, on 09.09.2009, on receipt of the unserved postal cover, placed the petition ex-parte on 18.11.2009 and proceeded to consider the evidence tendered by the respondent-husband. By judgment dated 30.11.2009 decreed the suit and granted a decree of divorce ex-parte.**

4. **It is the case of the petitioner-wife that after issuing the notice on 15.07.2009 she had a discussion with her husband and the issues were thrashed out and concealing the factum of having already filed a petition for divorce and having obtained an ex-parte decree of divorce, he had continued relationship with her and was also taking care of the family. She further contend that she was shell-shocked when she received a legal notice on 30.05.2019 from the respondent's advocate informing her about the ex-parte decree of divorce and copies of which was also not furnished. She also claims that she replies to the said notice and thereafter filed an application under Order IX Rule 13 of the Code of Civil Procedure (CPC), 1908 to set**

aside the ex-parte decree of divorce alongwith an application under Section 5 of the Limitation Act, 1963 for condonation of delay in filing said application.

5. **The said applications having been allowed and ex-parte decree passed having been set aside, the unsuccessful respondent-husband challenged the same before the High Court by filing an appeal against the said order which found favour by opining that the notice sent to the petitioner-wife had been refused by her and the said notice was duly sent to the proper address and as such she cannot plea ignorance of the proceedings after having refused to receive the notice and she cannot reopen the concluded proceedings after 10 years. The petition came to be allowed and the order condoning the delay was set aside by dismissing the application for condonation of delay and consequently application filed under Order IX Rule 13 CPC also came to be dismissed. Hence, this petition.**

6. **Having heard the learned counsel appearing for the parties and on perusal of the records, we notice that High Court**

grossly erred in not noticing the provision governing the service of notice namely Order V Rule 19 CPC which clearly mandates that where summons is returned under Rule 17 CPC, the Courts shall, if the returned postal cover or summons under that Rule not being verified by the affidavit of the serving officer, examining the serving officer on oath would be a ground to hold as service of notice as insufficient.

7. **In the instant case heavy reliance was placed by the petitioner-wife on the returned postal cover which would reflect that an endorsement made to the effect *"On giving information, not received Sd/- 26/10"*. This would clearly indicate that the serving officer who intended to serve the registered post article on the petitioner, had not served the article, but had left an intimation as contemplated under the postal regulations to the addressee calling upon her to collect the postal article.**

8. **This by no stretch of imagination can be held as refusal on the part of the petitioner-wife. That apart, when the trial court itself ordered simultaneous notice through the process of court, it ought to have awaited the report of the Bailiff as to the service of notice. This exercise was**

also not undertaken. This is clearly lacking in the instant case and there is no whisper either in the order of the High Court or the trial court with reference to the Bailiff's report. That apart, there being violation of the mandate of Rule 19 CPC, the service of notice on wife could not have been held as complete or sufficient by the High Court. It is for this precise reason the petitioner-wife, who was ignorant and not aware of the ex-parte decree, had invoked Section 5 of the Limitation Act, 1963 for condonation of delay in filing the application under Order IX Rule 13 pleading ignorant of divorce proceedings initiated by her husband.

9. **It would apt and appropriate to note at this juncture that no litigant would stand to benefit by approaching the court belatedly. While considering the cause for delay, it is the sufficient cause which would be of paramount consideration. Neither the length of delay nor the number of days of delay would be relevant. If the cause shown is sufficient, the delay irrespective of length, ought to be condoned. On the contrary, if the delay being short, if the cause shown would not inspire any confidence in the court, such delay need not be condoned. We also notice the judgment of this Court in the case of *Collector, Land***

Acquisition, Anantnag and Anr. **v.** ***Mst Katiji and Others,***

AIR 1987 SC 1353 which reads as under:

> **“3. The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:**
>
> > **"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.**
> >
> > **2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.**
> >
> > **3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.**
> >
> > **4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.**
> >
> > **5. There is no presumption that delay is occasioned deliberately, or on account of culpable**

negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the "State" which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time-barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing

to both the sides.”

10. **Hence, by considering the prayer for condonation of delay, irrespective of length of delay, cause which has been shown requires to be examined. It is this precise exercise which was undertaken by the trial court, and having found that there was fragrant violation of the mandate of Rule 17 and 19 Order 5 CPC has rightly condoned the delay, which ought not to have been interfered by the High Court in its appellate jurisdiction. As such, we are of the considered view that the impugned order cannot be sustained.**

11. Accordingly, impugned order is set aside and the appeal is allowed. The parties are at liberty to work out their rights before the trial court with regard to maintenance, if they are so advised. No orders as to costs.

12. Pending application(s), if any, shall stand disposed of.

.....J.

(ARAVIND KUMAR)

.....J.
(N.V. ANJARIA)

New Delhi;
December 15, 2025.

ITEM NO.60 COURT NO.16 SECTION IV-C

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 21693/2025

[Arising out of impugned final judgment and order dated 23-01-2025 in MP No. 1739/2020 passed by the High Court of Madhya Pradesh Principal Seat at Jabalpur]

JYOTSNA KANOONGO Petitioner(s)

VERSUS

SHAILENDRA KANOONGO Respondent(s)

FOR ADMISSION and I.R.

IA No. 176348/2025 - EXEMPTION FROM FILING O.T.

Date : 15-12-2025 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARAVIND KUMAR
HON'BLE MR. JUSTICE N.V. ANJARIA

For Petitioner(s) :Mrs. Shivali Sharma, Adv.
Mr. Priyank Upadhyay, AOR
Mr. Dhananjay Kumar, Adv.

For Respondent(s) : Mr. Sameer Shrivastava, AOR

UPON hearing the counsel the Court made the following
O R D E R

1. Leave granted.

2. Appeal is allowed in terms of the Signed Order placed on the file.

3. Pending application(s), if any, shall stand disposed of.

(RASHI GUPTA) (AVGV RAMU)
COURT MASTER (SH) COURT MASTER (NSH)