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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ MAT.APP.(F.C.) 3/2021
SHWETA DUBEY Appellant

Through: Ms. Preeti Singh, Advocate.

versus

AKSHAY MISHRA Respondent

Through: Mr. Kislay Komal, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

ORDER
11.02.2021

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1. Pursuant to the last order, the respondent has appeared through counsel and filed a response.
2. We have heard learned counsel for the parties and proceed to dispose of the present appeal.
3. The appellant has preferred the present appeal to assail the order dated 07.12.2020 passed by the Principal Judge, Family Courts, Patiala House Courts, New Delhi in HMA No.226/2018, whereby the Court, while issuing notice in the application preferred by the appellant under Order IX Rule 13 CPC for setting aside of the *ex-parte* judgment dated 24.09.2020, has not stayed the said order. The appellant has also sought setting aside of the *ex-parte* judgment dated 24.09.2020, whereby the petition preferred by the husband/ respondent herein under Section 13(1)(ia) of the Hindu Marriage

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By: SHIYU PUNDE SINGH
DN: cn=SHIYU PUNDE SINGH,
ou=HON'BLE MR. JUSTICE REKHA PALLI,
o=HON'BLE MR. JUSTICE REKHA PALLI,
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Act, 1955 on the grounds of cruelty has been allowed. A perusal of the impugned judgment dated 24.09.2020 shows that though the appellant had filed her written statement opposing the petition, she did not appear before the Family Court on 16.03.2020, either herself or through her counsel and consequently, she was proceeded *ex-parte*. Thereafter, the Family Court fixed the matter for hearing through video-conferencing as physical hearings were not being held on account of the limited functioning of the Courts, owing to the COVID-19 pandemic. Since the appellant did not appear in those proceedings, the Family Court has proceeded to pass an *ex-parte* judgment and allowed the divorce petition filed by the respondent.

4. Before us, the only submission of learned counsel for the respondent is that despite being well aware of the fact that the proceedings were being held through video-conferencing, the appellant did not participate in those proceedings and therefore, the Family Court was justified in allowing the petition by relying on the un rebutted testimony of the respondent.

5. Having perused the record, we are of the view that the impugned judgment cannot be sustained, the same having been passed without granting due opportunity to the appellant to contest the divorce petition wherein she had already filed her written statement. On 16.03.2020, when the matter was fixed before the Family Court, the Pandemic had already set-in and the functioning of the Courts was also severely restricted. In fact, the Courts subordinate to this Court were specifically instructed not to pass any adverse orders against those who did not appear either physically or in proceedings

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Dr. DUTTAPRASAD
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held through video-conferencing due to the Pandemic. No doubt, the appellant's counsel did not appear before the Family Court on 16.03.2020,

but we are of the view that in the light of the then-prevailing circumstances, the Family Court should have waited for the appellant to appear and contest the proceedings, rather than hurriedly proceeding *ex-parte* against her.

6. The impugned judgment is, therefore, set aside and the matter is remanded back to the Family Court for re-adjudication from the stage the appellant was proceeded *ex-parte*. Consequently, the application under Order IX Rule 13 CPC preferred by the appellant before the Family Court, has been rendered infructuous and does not survive.

7. The parties shall appear before the concerned Family Court on 01.03.2021.

8. We make it clear that while setting aside the impugned judgment, we have not gone into the merits of the case and this order shall not influence the mind of the Family Court in deciding the divorce petition and all other pending applications on its own merits.

VIPIN SANGHI, J

REKHA PALLI, J

FEBRUARY 11, 2021

N.Khanna

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