

IN THE COURT OF JUDGE, FAMILY COURT, BHUBANESWAR.

Present: Shri Pravakar Mishra, OSJS (S.B),
Judge, Family Court, Bhubaneswar.

C.M.A No. 02 of 2015

Smt. Tanushree Mishra, aged about 28 years,
W/o-Sarada Prasanna Mohapatra,
D/o-Niranjan Mishra,
At present residing-C/o-Sunakar Dwivedy,
House No. 302/A, At-Bali Sahi, (Nuapada),
P.O./P.S.-Madhupatna, Town/Dist-Cuttack-10.

..... Petitioner

Versus

Sarada Prasanna Mohapatra, aged about 33 years,
S/o-Biranchi Narayan Mohapatra,
At-Puba, Plot No. 456/2042,
In front of CIFA 1st Gate, P.O.-Kousalyaganga,
P.S.-Pipili, Dist-Puri, Pin-751002,
At present serving as Marketing Manager,
Javeri Flexo India Ltd. (JFL),
1106, Chranjeeb Tower-43,
Nehru Place, New Delhi.

..... Opp. Party

Date of Argument : 23.06.2015

Date of Judgment: 29.06.2015

J U D G M E N T

The petitioner-wife has filed an application U/o-9, Rule-13 of the C.P.C for restoration of C.P. No. 238/13 after setting aside order of dismissal dated 06.12.2014.

2. The facts of the case of the petitioner-wife are that the Opp. Party-husband has instituted a matrimonial case bearing No. C.P. No. 238/13 against her in this Court on some false, fabricated and imaginary grounds and obtained an ex-parte decree of divorce against her while the TRPC is

pending before the Hon'ble High Court. According to the petitioner-wife she has filed a petition U/s. 125 Cr.P.C. before the learned Judge, Family Court, Cuttack against the Opp. Party vide C.R.P. No. 104/2013 and another petition against the Opp. Party and others U/s. 12 of the Protection of Women from Domestic Violence Act before the learned S.D.J.M.(s), Cuttack vide C.M.C. No. 180/2013 and in those cases the Opp. Party has appeared and both the cases are pending for disposal. In the meantime, she has filed a petition before the Hon'ble Court vide T.R.P (C) No 86/2013 for transfer of C.P. No. 238 of 2013 from this Court to the Court of Judge, Family Court, Cuttack wherein, the Opp. Party-husband has also appeared and also the said case is pending before the Hon'ble Court. It is further stated by the petitioner-wife that the Hon'ble Court was pleased to pass an order for long adjournment of this case. It is further stated by the petitioner that she has not traced out the date of posting of the present case and in the meanwhile she was set ex-parte and the Opp. Party obtained an ex-parte decree of divorce, when he has been taking time in High Court in TRP(C) 86/2013 deliberately. When she was searching for her date of posting of the case, on 03.01.2015, for the first time it came to her knowledge that an ex-parte decree of divorce was obtained by the Opp. Party by suppressing the fact from this Court on 06.12.2014. According to her, she has not missed the dates deliberately or intentionally and therefore, she may not be debarred from her right. It is the further case of the petitioner that there is no delay in the filing of the said restoration application and if the restoration petition will not be allowed it would cause failure justice and an irreparable loss and injury to her.

3. The Opp. Party did not enter contest the petition and therefore, is set ex-parte.

4. The only point is formulated to resolve the controversy is that whether petitioner-wife has sufficient cause to remain absent from the court on the appointed date of hearing?

5. The petitioner-wife in order to prove her case, she herself has been examined as P.W.1 but did not chose to file any document on her behalf. P.W.1 during his examination in chief has supported her case. Her statement is facsimile to the averments made in the petition which have gone unchallenged as there has been no cross examination since the Opp. Party-husband has been set ex-parte. Law is well settled that when a statement of a witness gone unchallenged, the same must be accepted as true. Therefore, the statement of P.W. 1 is accepted as true. From the aforesaid evidence, it is as much as clear in the noon day that the petitioner obtained the ex-parte decree by suppressing the material fact of pendency of the TRP(C) 86/2013 before the Hon'ble Court for transfer of the present proceeding to the learned Judge, Family Court, Cuttack. Thus, this per-se a sufficient ground to set aside the ex-parte orders.

6. In as much as an application under Order 9 Rule 13 is a beneficial legislation and to be interpreted liberally in favour of the defendant. Approach of the Court should be to do justice and the valuable rights of the parties should be determined on merit. Further, in case, relating to setting aside of ex-parte decree, the guiding principle would be to give opportunities to the parties to seek adjudication the dispute on merit except where one of them remained indifferent for a prolonged period of unexplained delay. An ex-parte decree for divorce against woman warrants slightly liberal approach (See N. Hemamalini Vrs. N.A. Raghu) 2008 (I) ALT 458. Here in the instant case, there was no delay. The petitioner soon after knowing that she has been set ex-parte, she has filed the present petition in time with a view that her dispute should be adjudicated on merit after giving an opportunity of hearing. That apart, no objection has been filed to the restoration petition. Therefore, it is open to the Court to pronounce judgment on the basis of facts contained in the pleading of the petitioner as per the proviso of order 8 Rule 5 1984 (II) OLR 870. Therefore, I feel it expedient in the interest of justice that one more chance afforded should be appended to her to defend her case. In other words her application Under 9

Rule 13 deserves merit to be allowed and in fact, I did the same. Hence, it is ordered;

O R D E R

The petition is allowed ex-parte in favour of the petitioner and the C.P. No. 238/2013 is restored subject to payment of cost of Rs. 2,000/-.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 29th day of June, 2015.

JUDGE, FAMILY COURT,
BHUBANESWAR.

List of witness on behalf of petitioner

P.W. 1 Smt. Tanushree Mishra

List of witness on behalf of Opp. Party

None

List of exhibits on behalf petitioner

Nil

List of exhibits on behalf of Opp. Party

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.