

IN THE COURT OF JUDGE, FAMILY COURT, BHUBANESWAR.

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

C.M.A No. 108 of 2013

Debjani Dash, aged about 35 years,
W/o-Yetesh Pattnaik,
D/o-Balaram Dash,
Resident of Gandua Choura Chhack,
At/P.O./P.S./Dist-Puri.
At present residing at B-75/76, Raghuvir Enclave, Najfagarh,
New Delhi-43.

..... Petitioner

Versus

Yetesh Pattnaik, aged about 36 years,
S/o- Sri Yosobanta Pattnaik,
Resident of MIG-38, K-6-A, Kalinga Vihar,
Bhubaneswar, Dist-Khurda.
At present residing at-RZP-70-A, Ashwani Apartment,
House No. 102, Rajnagar Part-II, Gali No.-1, Dwarka,
Sector-8, New Delhi-77.

..... Opp. Party

Date of Argument : 02.12.2015

Date of Order : 14.12.2015

ORDER

This order arises on an application filed by the petitioner-wife U/o-9 Rule-13 of 151 C.P.C. with prayer to set aside the order dated 24.07.2012 and ex-parte decree dated 03.10.2012 passed in C.P. No. 150 of 2011.

2. The facts of the case of the petitioner are that the Opp. Party has filed the original application for dissolution of his marriage with her before Civil Judge, (Sr. Division), Bhubaneswar vide Mat Case No. 1160 of 2009 and subsequently on transfer of the case record to this Court, it was renumbered as C.P. No. 150 of 2011. According to the petitioner, after transfer of the case record, notice was issued by registered post in her wrong address for which

the same was not served and she was set ex-parte on 25.06.2012 and subsequently an ex-parte order was passed on 03.10.2012 against her. It is the further case of the petitioner that there is no delay in filing of the said restoration application and if the restoration petition will not be allowed she will suffer an irreparable loss.

3. The Opp. Party failed to file his objection for which his defence has been struck off as per order dated 02.11.2015.

4. The only point formulated to resolve the controversy is whether petitioner has sufficient cause to remain absent from the court on 25.06.2012?

5. The petitioner in order to prove her case she, herself, has been examined as P.W.1. The respondent in order to prove his case he, himself, has been examined as O.P.W. 1. Both parties did not chose to file any document on their behalf.

6. The petitioner while being examined as P.W. 1 has explained her non-participation in the proceeding as she has not received the notice from this Court after transfer of the case record from Civil Judge, (Sr. Division), Bhubaneswar. The Opp. Party while being examined himself as O.P.W. 1 has not controverted the aforesaid fact of the petitioner in evidence. He has only stated that the notice was sent to the petitioner in her correct address mentioned in her petition but she avoided from receiving the same. The Opp. Party could not show that the notice has actual being served on the petitioner in her correct address i.e. at B-75/76, Raghuvir Enclave, Nazafgarh, New Delhi-43. In the address sheet of the petition in the MAT Case No. 1160 of 2009, which is renumbered as C.P. No. 150 of 2011, the address of the petitioner has been mentioned as House No. B-91/B-1, Raghuvir Enclave, Nazafgarh, Near Dwarka Mor Metro Station, New Delhi. The un-served registered post has not been returned to the Court. This court vide its order dated 25.06.2012, set the petitioner ex-parte as the petitioner did not turn up despite several summons. When summons have been dispatched in her wrong address, it is amounting to non service of notice on the petitioner and

therefore, she could show her sufficiency from withdrawing from the court on the date when she was set ex-parte. The proceeding under Order 9 Rule 13 is beneficial legislation and to be interpreted liberally in favour of the wife. Additionally, it is the Public Policy that all matters should be disposed of on merit to avoid multiplicity of litigation. Thus, in my considered opinion, the petitioner could show her sufficiency withdrawing her appearance from the Court on 25.06.2012 and therefore, she is entitled to the relief claimed but subject to payment of cost of Rs. 2,000/-. Therefore, the ex-parte Judgment dated 03.10.2012 is liable to be set-aside. Hence, it is ordered;

O R D E R

The petition is allowed on contest in favour of the petitioner and the C.P. No. 150/2011 is restored subject to payment of Rs. 2,000/- to the Opp. Party.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 14th day of December, 2015.

JUDGE, FAMILY COURT,
BHUBANESWAR.

List of witness on behalf of petitioner

P.W. 1 Debjani Dash

List of witness on behalf of Opp. Party

O.P.W. 1 Yetesh Pattnaik

List of exhibits on behalf petitioner

Nil

List of exhibits on behalf of Opp. Party

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.