

## IN THE COURT OF JUDGE, FAMILY COURT, BHUBANESWAR.

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

C.M.A No. 12 of 2015

Sri Satya Prakash Das, aged about 32 years,  
S/o-Sri Sudhanshu Mohan Das,  
At present:- Jagannath Plaza, Flat No. 102,  
Block-B, Gajapati Nagar, near Press Chhak, Bhubaneswar-751013,  
Dist-Khurda. Krushna Chandra Mishra,

..... Petitioner

Versus

1. Smt. Licky Mohanty, aged about 32 years,  
W/o-Sri Satya Prakash Das,  
D/o-Sri Bhabani Shankar Mohanty,  
Presently residing at-Doctors Quarter, Inside the Campus of Govt.  
Medical, Baripada, At/P.O./P.S.-Baripada,  
Dist-Mayurbhanj.
2. Eshani Das, aged about 2 years,  
D/o-Sri Satya Prakash Das,  
At present residing:- C/o-Smt. Licky Mohanty,  
H/o-Tarakanta Mohanty,  
At-Kesharpur, Barahi Lane, Buxi Bazar, P.S.-Darghabazar,  
Dist-Cuttack.

..... Respondents

Date of Argument : 04.03.2016

Date of Order : 09.03.2016

ORDER

This order arises on an application filed by the petitioner-husband U/o-9, Rule-9 read with 151 of the C.P.C. for restoration of C.P. No. 317/2012 after setting aside the order of dismissal dated 06.09.2014.

2. The facts of the case of the petitioner are that he has instituted a matrimonial case bearing No. C.P. No. 317 of 2012 against the respondent No.1 before this Court and was looking after the proceeding. The proceeding was posted to 06.09.2014 for hearing of the case. According to the petitioner he has entrusted his case to Advocate Sri Prasanta Sahoo, who had not taken any steps on the date fixed so also on the earlier dates and therefore, the said case was dismissed on 06.09.2014. He has further averred that his absence in the Court on 06.09.2014 was not intentional but it was due to the negligence of his lawyer. It is averred by the petitioner that he came to know about the dismissal of the said case for the first time on 26.01.2015 and on 28.01.2015 he submitted his application for restoration. 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 be caused an irreparable loss and injury to him.

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

4. The only point formulated to resolve the controversy is whether petitioner has sufficient cause to remain absent on the court on 06.09.2014?

5. The petitioner in order to prove his case he, himself has been examined as P.W.1. P.W.1 during his examination in chief has supported his case. His statement is facsimile to the original petition which have gone unchallenged as there has been no cross examination since the respondent No.1 has been set ex-parte. Even though, the statement of P.W. 1 has gone unchallenged yet, the same does not disclose any substantiate cause withholding his appearance from the Court. The petitioner was present on 30.08.2014 and took the next date of hearing of the case as 06.09.2014 and on the aforesaid appointed date of hearing, he was found absent on repeated calls and has also not taken any steps for hearing of the case. In Family Court matters a lawyer is appointed as Amicus Curiae but not as a conducting lawyer. The legal

practitioner appearing as Amicus Curiae is friend of the Court and not appointed as private Counsel by parties to action or to represent them in partisan manner and for their personal use and benefit and they do not have function of taking over conduct of case for parties to the litigation vide case Law in Sadhan Patra vrs. Subrat Pradhan reported in II (2006) DM. 316. The petitioner instead of coming to the Court on the appointed date of hearing could have intimated the Court sufficient ahead that he would not be able to attend the Court on the appointed date of hearing assigning reasons in the petition. He has shown lackadaisical attitude in the prosecution of the case by just throwing blame on the advocate which cannot be countenanced. Therefore, the petitioner could show his sufficiency withdrawing his appearance from the Court on the appointed date of hearing and as such, the petition filed by the petitioner stands no merit and rejected.

O R D E R

The petition filed by the petitioner is dismissed but without cost.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 9<sup>th</sup> day of March, 2016.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1        Sri Satya Prakash Das

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,  
BHUBANESWAR.