

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

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

C.M.A No. 59 of 2014

Rasmita Behera, aged about 34 years,  
W/o-Rajesh Kumar Das,  
D/o-Abhiram Behera,  
Qrs No. AE-3, Baramunda Housing Board,  
P.S.-Khandagiri, Bhubaneswar,  
Dist-Khurda.

..... Petitioner

Versus

Rajesh Kumar Das, aged about 40 years,  
S/o- Sridhar Das,  
Lascar, Office of the I (O),  
Armed SQN NCC, Old Secretariat Building,  
Buxibazar, Cuttack,  
At present Qrs. No. 1R/8,  
At-OMP Square, Cuttack.

..... Opp. Party

Date of Argument : 14.07.2015

Date of Order : 30.07.2015

O R D E R

This order arises on an application filed by the petitioner-wife U/o-9 Rule-13 of the Family Court Act with a prayer to set aside the order dated 13.10.2014 passed in C.P. No. 442 of 2010.

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. The case was posted to 10.09.2014 for evidence and both of them were present and she has received a sum of Rs. 12,500/- towards her interim maintenance. It is case of the petitioner that on the said date when she refused to cross-examine the Opp. Party, she was awarded with cost of Rs. 1,000/- and thereafter when she

asked about the next date of hearing to the Bench Clerk, he gave the date i.e. 24.09.2014 but due to crowds in the Court Hall, the voice of the Bench Clerk could not be audible properly. She heard it as 24.10.2014 instead of 24.09.2014. It is further averred by the petitioner that in the meantime she fell seriously ill with disease of Bronchitis and chest pain and as per advice of the doctor she took rest for which she could not attend the court on that date fixed and taking such advantages the Opp. Party by committing fraud has managed to get an ex-parte order against her and after her recovery she came to know that the ex-parte order was passed by this Court on 13.10.2014. According to her, she has not deliberately or intentionally withdrawn her appearance from the Court and therefore, she may not be debarred from her right. 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 it will put her irreparable loss.

3. The Opp. Party entered contest and filed his objection. It is the case of the Opp. Party that the petition is not maintainable and there is no cause of action to file this petition at this stage and petitioner in order to linger the case and to harass him file such petition. According to him the petitioner has already been set ex-parte for two times and the natural justice has already violated by her in several times. It is further averred by the Opp. Party that there is no merit in this case and hence, the petition filed by the petitioner is liable to be dismissed.

4. The only point formulated to resolve the controversy is whether petitioner has sufficient cause to remain absent from the court on 24.09.2014?

5. The petitioner in order to prove her case she, herself, has been examined as P.W.1 and relied on one document i.e. Ext. 1 is the medical certificate. The respondent in order to prove his case he, himself, has been examined as O.P.W. 1 but did not chose to file any document on his behalf.

6. The petitioner while being examined as P.W. 1 has explained her non-participation in the proceeding on 24.09.2014 as she heard the next date of

hearing from Bench Clerk as 24.10.2014 due to crowds in the Court Hall and thereafter she suffered from Bronchitis and chest pain and as per the advice of the doctor she took rest for which she has no scope to follow up the status of the case and as such, her withdrawal from the Court on 24.09.2014 was not her pre-pense conduct. In order to vouch safe her illness, she filed Ext. 1, the medical certificate. Reference made to Ext. 1, mentioner has been made that the petitioner was suffering from Bronchitis and chest pain and advice to bed rest for the period from 12.09.2014 to 20.10.2014. Ext. 1 was issued by the Specialist in Chest and T.V, Capital Hospital, Bhubaneswar. Therefore, there is no gnawing doubt that the petitioner was suffering from Bronchitis and chest pain for the period under reference. It was the Opp. Party made a trenching criticism about the previous conduct of the petitioner by highlighting previously on two occasions, the petitioner was set ex-parte due to her withdrawal from the Court and therefore, the petitioner deliberately avoiding the Court to linger the proceeding in order to trash the Opp. Party. I am not gullible to sustain such excoriation on the lone reason that previous negligence of the party cannot be considered to be a good ground for not setting aside an ex-parte decision. The petitioner does not gain by remaining absence where her interest is likely to be affected by ex-parte adjudication. The object of the Court is to do substantial justice to the parties by disposing the matters on merit and therefore, in such circumstances, the duty of the Court is to adopt a pragmatic rational approach but not a pedantic approach. Above all Order 9 Rule 13 is beneficial legislation and to be interpreted liberally in favour of the wife. As regards to delay and hardship, the Opp. Party can be compensated from the petitioner. Thus in my considered opinion, the petitioner could show her sufficiency withdrawing her appearance from the Court on 24.09.2014 and therefore, she is entitled to the relief claimed but subject to payment of cost of Rs. 3,000/-. Therefore, the ex-parte Judgment dated 13.10.2014 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. 442/2010 be restored subject to payment of Rs. 3,000/- to the Opp. Party. Put up on 12.08.2015 for payment of cost.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 30<sup>th</sup> day of July, 2015.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

List of witness on behalf of petitioner

P.W. 1                      Rasmita Behera

List of witness on behalf of Opp. Party

O.P.W. 1                    Sri Rajesh Kumar Das

List of exhibits on behalf petitioner

Ext. 1                        Medical Certificate

List of exhibits on behalf of Opp. Party

Nil

JUDGE, FAMILY COURT,  
BHUBANESWAR.