

IN THE COURT OF JUDGE, FAMILY COURT, BHUBANESWAR.

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

C.M.A No. 84 of 2014

Manorama Mohapatra @ Panda, aged about 41 years,
W/o-Prabodh Kumar Panda,
D/o- Late Nisakar Mohapatra,
At present residing at Village/P.O.-Mendhasal,
P.S.-Chandaka, Dist-Khurda.

..... Petitioner

Versus

Prabdha Kumar Panda, aged about 51 years,
S/o- late Banamali Panda,
Vill/P.O.-Nuasasan, P.S.-Pipili, Dist-Puri.
At present residing at Tea Stall, in front of Govt. Directorate,
Bhubaneswar.

..... Opp. Party

Date of Argument : 04.12.2015

Date of Order : 16.12.2015

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 30.06.2014 and ex-parte order dated 08.08.2014 passed in C.P. No. 39 of 2013.

2. The facts of the case of the petitioner are that the Opp. Party has filed the C.P. No. 39 of 2013 U/s. 13 of the Hindu Marriage Act, 1955 (hereinafter the Act, 1955) for dissolution of his marriage with her. According to the petitioner that due to her illness from 05.01.2014 she could not able to contact her advocate or attend the court on the date of hearing i.e. 30.06.2014. After recovery from her ailment and also after obtaining the certified copy on 09.12.2014, she came to know that due to her non appearance an ex-parte order was passed 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 filed his objection stating therein that the petition has filed this petition at a belated stage to harass him. The specific case of the Opp. Party is that the petitioner without rhyme or reason left his house since 25.10.2010 according to her sweet will and there after several attempt have been made from his side to bring her back but the petitioner did not want to join his company and hence, the petition filed by the petitioner is liable to be rejected.

4. The only point formulated to resolve the controversy is whether petitioner has sufficient cause to remain absent from the court on 30.06.2014?

5. The petitioner in order to prove her case she, herself, has been examined as P.W.1 and placed relianced on some medical papers which are marked as Ext. 1 to 1/h. The respondent neither filed his affidavit evidence nor 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 30.06.2014 was due to her suffering from 05.01.2014 as well as non communication of the date of hearing by her learned amicus curiae and in order to vouch-safe her illness, she exhibited the medical certificates marked Ext. 1 and 1/a. Though the Opp. Party filed his objection yet, has not controverted the aforesaid fact of the petitioner either alluding oral or documentary evidence. Therefore, the assertion of petitioner that she could not attend the court on the appointed date of hearing of the case for the aforesaid twine reasons stands proved. Speaking differently, the petitioner could show her sufficiency withdrawing her appearance 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

