

IN THE COURT OF JUDGE, FAMILY COURT, BHUBANESWAR.

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

C.M.A No. 95 of 2013

Sri Sunakara Jena, aged about 36 years,
S/o-Kapila Jena, Vill-Tangibanta,
P.O.-Kalyanpur, P.S.-Mancheswar,
Dist-Khurda.

..... Petitioner

Versus

Smt. Basanti Swain, aged about 37 years,
W/o-Sunakara Jena,
D/o-Late Janakar Swain,
Vill.-Balikuda, P.O.-Gopalpur,
P.S.-Cuttack Sadar,
Dist-Cuttack.

..... Opp. Party

Date of argument : 22.12.2014

Date of order : 05.01.2015

ORDER

This order arises on an application filed by the petitioner-wife U/o-9, Rule-9 of the C.P.C for restoration of C.P. No. 658/11 after setting aside order of dismissal dated 21.06.2013.

2. The facts of the case of the petitioner are that he has instituted a matrimonial case bearing No. C.P. No. 658/11 against the respondent in this Court and has been watching diligently prosecuting the same. The said case was posted to 21.06.2013 for conciliation. According to the petitioner he was bed ridden for the period from 20.06.2013 to 23.06.2013 for which he could not attend the Court on 21.06.2013 but had filed a petition seeking time on

his behalf, which was rejected and the said case was dismissed. He has further averred that his absence in the Court on 21.06.2013 was not intentional and it was due to his illness he was prevented from attending the Court, when the said case was called on for hearing. He came to know about the dismissal of the said case for the first time on 05.07.2013 and on 16.07.2013, he has filed an application for restoration. He has further stated that he was suffering from fever with Amoebic Dysentery from 20.06.2013 to 23.06.2013 and was under treatment of Dr Bidyadhar Das who had advised him for rest during the period of illness & treatment. 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 him.

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

4. The following only point is formulated to resolve the controversy is that whether petitioner has sufficient cause to remain absent from the court on 21.06.2013?

5. The petitioner in order to prove his case, he himself has been examined as P.W.1 and relied on one document i.e. medical certificate. P.W.1 during his examination in chief has supported his case. His statement is facsimile to the averments made in the petition which have gone unchallenged as there has been no cross examination since the respondent 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. Since it has been the duty of the petitioner to establish the ground i.e. his non appearance which sufficient cause when the evidence of P.W. 1 is examined in ferreted eyes and on such examination I am satisfied that the petitioner could able to establish the same which fact has been vouch-safed

by medical certificate marked Ext. 1. Thus, the petition deserves to be allowed. Hence, ordered;

O R D E R

The petition is allowed ex-parte in favour of the petitioner and the C.P. No. 658/11 is restored.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 5th day of January, 2015.

JUDGE, FAMILY COURT,
BHUBANESWAR.

List of witness on behalf of petitioner

P.W. 1 Sunakara Jena

List of witness on behalf of Opp. Party

None

List of exhibits on behalf petitioner

Ext. 1 Medical certificate

List of exhibits on behalf of Opp. Party

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.