



CGHC010058302026



2026:CGHC:44565

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****WP227 No. 204 of 2026**

1 - L. Ramna Rao S/o L. Lingaraju Aged About 46 Years R/o Panchshil Nagar Paschim, Ward No. 19, Charoda, Police Station - Purani Bhilai - 3, District - Durg (C.G.)

... Petitioner(s)**versus**

1 - Smt. L. Padmawati W/o L. Ramna Rao Aged About 44 Years Through - P. Shyamla, R/o Misiyabada, Indira Nagar, Ward No. 26, Charoda, Police Station - Purani Bhilai - 3, Tahsil - Patan, District - Durg (C.G.)

... Respondent(s)

For Petitioner(s)	:	Mr. Jitendra Gupta, Advocate
For Respondent(s)	:	Mr. Neeraj Baghel, Advocate

(Hon'ble Shri Justice Ravindra Kumar Agrawal)**Order on Board****14/10/2026**

The present petition under Article 227 of the Constitution of India has been preferred by the petitioner assailing the order dated 02.01.2026 passed by the learned First Additional Principal Judge, Family Court, Durg, in Civil MJC No. 59 of 2025, whereby the learned

Family Court declined to record the evidence of the parties in connection with the application preferred by the respondent under Order IX Rule 13 of the Code of Civil Procedure, 1908 (for short, "the CPC"), seeking setting aside of the ex parte judgment and decree dated 03.08.2024.

2. Learned counsel appearing for the petitioner submits that the petitioner had instituted proceedings under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, seeking dissolution of marriage by a decree of divorce. The said proceedings culminated in an ex parte judgment and decree dated 03.08.2024. Thereafter, on 09.06.2025, the respondent preferred an application under Order IX Rule 13 of the CPC seeking setting aside of the aforesaid ex parte judgment and decree.

3. The respondent, in her application, has pleaded that although she had entered appearance in the matrimonial proceedings pursuant to service of summons on 05.09.2023, she did not thereafter participate in the proceedings on account of the assurance allegedly extended by the petitioner that he would withdraw the proceedings instituted by him. It is contended that, acting upon the said assurance, she remained absent, which ultimately resulted in the ex parte judgment and decree being passed against her.

4. Learned counsel for the petitioner further submits that, during the pendency of the proceedings arising out of the application under Order IX Rule 13 of the CPC, the petitioner moved an application on 23.09.2025 requesting that the respondent's application be decided

after recording evidence of the parties. The learned Family Court, however, rejected the said request, observing that recording of evidence was not necessary for deciding the application. According to learned counsel, the allegations made by the respondent concerning the alleged assurance and the circumstances leading to her non-appearance constitute disputed questions of fact which cannot appropriately be adjudicated without affording the parties an opportunity to adduce evidence.

5. Per contra, learned counsel appearing for the respondent opposes the petition and submits that the application under Order IX Rule 13 of the CPC can be adjudicated on the basis of the pleadings and material already available on record. It is further contended that the petitioner's request for recording evidence is intended only to protract the proceedings and that the learned Family Court has committed no error in declining the same.

6. I have heard learned counsel for the parties and perused the material available on record.

7. The principal question arising for consideration is whether, in the facts and circumstances of the present case, the learned Family Court was justified in declining the petitioner's request for recording evidence before adjudicating the respondent's application under Order IX Rule 13 of the CPC.

8. A perusal of the application preferred by the respondent indicates that she has sought setting aside of the ex parte judgment and decree,

inter alia, on the ground that the petitioner had obtained the decree without her effective participation in the proceedings and that her non-appearance was attributable to the assurance allegedly extended by the petitioner. She has further pleaded that she is a Telugu-speaking person from Andhra Pradesh, was unfamiliar with the local language and geographical circumstances of Durg, and had relied upon the petitioner's assurance that he would take care of her and their daughter. According to her, she came to know of the ex parte judgment and decree upon receiving a letter on 08.05.2025, when she visited Durg from Visakhapatnam.

9. It is not in dispute that the respondent had entered appearance in the matrimonial proceedings after service of summons. The controversy, therefore, does not rest merely upon the question of service of summons. The material dispute concerns the circumstances in which the respondent, despite having entered appearance, subsequently remained absent and whether the explanation furnished by her constitutes sufficient cause within the meaning of Order IX Rule 13 of the CPC.

10. The aforesaid explanation is specifically disputed by the petitioner. The question whether any assurance was extended by the petitioner, whether the respondent acted upon such assurance, and whether the circumstances pleaded by her prevented her from participating in the proceedings are matters which may have a bearing upon the determination of the application. These issues are essentially factual in nature and, if they cannot satisfactorily be resolved on the

basis of the admitted facts and the material already available on record, their adjudication would require an appropriate opportunity to the parties to establish their respective assertions by evidence.

11. It is well settled that an application under Order IX Rule 13 of the CPC is required to be decided in accordance with the statutory parameters prescribed therein. The Court must examine whether the summons was duly served and service is established, whether the applicant was prevented by sufficient cause from appearing when the matter was called for hearing. The existence of sufficient cause has to be assessed in the light of the facts and circumstances of the individual case. At the same time, the mere assertion of a disputed fact does not, by itself, make the recording of evidence obligatory in every proceeding under Order IX Rule 13 of the CPC. The necessity of evidence must be determined with reference to the nature of the controversy involved.

12. In the present case, the explanation of the respondent for her subsequent non-appearance rests upon an alleged assurance by the petitioner, whereas the petitioner disputes the same and seeks an opportunity to establish his stand. In these circumstances, the controversy cannot appropriately be treated as one which is necessarily capable of resolution merely by examining the rival pleadings, without considering whether evidence is required to determine the material factual issues. In the matter of ***Parimal v. Veena alias Bharti, (2011) 3 SCC 545***, the Supreme Court elucidated the scope and ambit of Order IX Rule 13 of the Code of Civil Procedure, 1908, and explained the circumstances in which an ex parte decree may be set aside. It was

held that, where the summons has been duly served, the Court is required to examine whether the defendant was prevented by sufficient cause from appearing when the suit was called for hearing. The existence of sufficient cause must be assessed in the light of the facts and circumstances of the case and in accordance with the statutory requirements prescribed under Order IX Rule 13 of the CPC.

13. Applying the aforesaid principle to the facts of the present case, it is evident that the respondent had entered appearance in the matrimonial proceedings pursuant to service of summons. Her explanation for subsequent non-appearance is that she had acted upon the alleged assurance extended by the petitioner that he would withdraw the divorce proceedings. The said assertion is disputed by the petitioner. Consequently, the question that arises for consideration is whether the circumstances pleaded by the respondent constitute sufficient cause for her subsequent non-appearance.

14. The aforesaid disputed circumstances are required to be examined in the light of the principles laid down by the Supreme Court. If the material factual controversy cannot satisfactorily be resolved on the basis of the existing record, the learned Family Court ought to consider affording the parties an appropriate opportunity to adduce evidence before adjudicating the application under Order IX Rule 13 of the CPC. It is, however, clarified that the necessity of recording evidence would depend upon the nature of the disputed facts and the material available on record.

15. Having regard to the nature of the rival pleadings and the specific factual controversy involved in the present case, this Court is of the considered opinion that the request for recording evidence ought not to have been rejected without due consideration of the necessity of such evidence for effective adjudication of the application. Permitting the parties to establish their respective stands would enable the learned Family Court to determine the issue of sufficient cause on the basis of the material duly brought on record. Such a course would not, by itself, confer any advantage upon either party, nor would it prejudice the merits of the respondent's application.

16. Accordingly, the petition is allowed. The impugned order dated 02.01.2026 passed by the learned First Additional Principal Judge, Family Court, Durg, in Civil MJC No. 59 of 2025, is hereby set aside. The learned Family Court is directed to permit the parties to adduce evidence, to the extent necessary for adjudication of the material factual issues arising from the application under Order IX Rule 13 of the CPC, and thereafter decide the said application, in accordance with law on its own merits. The learned Family Court shall make endeavour to expedite the proceedings and conclude the same as early as possible. Meanwhile, the interim order stands vacated.

Sd/-
(Ravindra Kumar Agrawal)
Judge

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