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HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 953 of 2026

Yogesh Agrawal S/o Shri Sitaram Agrawal Aged About 52 Years R/o House No. 70, Jalvihar Colony Raipur, Tahsil And District Raipur (C.G.)

... **Petitioner(s)**

versus

Smt Shital Agrawal Aged About 40 Years, W/o Shri Yogesh Agrawal, R/o Flat No. 104, First Floor Block B, Magneto Signature Home -02, Beside Magneto Mall G.E. Road Raipur, Tahsil And District Raipur (C.G.)

... **Respondent(s)**

For Petitioner(s) : Mr. Parth Kumar Jha, Advocate

For Respondent(s) : Mr. Anurag Dayal Shrivastava, Advocate

(Hon'ble Shri Justice Ravindra Kumar Agrawal, J.)

Order on Board

09/10/2026

1. Heard.
2. Present is a writ petition under Article 227 of the Constitution of India filed by the petitioner against the impugned order dated 23.07.2026 passed by learned Third Additional Principal Judge, Family Court, Raipur in Case No.83/2026, whereby the application filed by the petitioner for deciding the application filed by the respondent under Order IX Rule 13 of CPC after recording of evidence of the parties has been rejected.
3. Learned counsel for the petitioner would submit that the petitioner was

the applicant before the learned Family Court who had prosecuted an application under Section 13(1)(ia)(ib) of the Hindu Marriage Act, 1955 in HMA case No. 805/2025, which was decreed ex-parte on 27.03.2026 and decree of divorce has been granted in favour of the petitioner. Subsequently, the respondent had filed an application under Order IX Rule 13 of CPC on 22.04.2026 for setting aside the ex-parte decree passed against her, in which the petitioner filed an application on 17.07.2026 for deciding the case after recording evidence of the parties as there exists a disputed question of fact, which can not be decided only on the basis of documents and the affidavits. The learned trial Court rejected the application filed by the petitioner vide impugned order dated 23.07.2026 holding that the issue involved in the case with respect to set aside the ex-parte decree does not requires recording of any evidence of the parties and it can be decide on the basis of the material produced before it. He would further submit that the service of notice upon the respondent is the disputed question of fact which ought to have been decided after recording evidence of the parties, therefore, the impugned order may be set aside and the learned Family Court may be directed to decide the application filed by the respondent under Order IX Rule 13 of CPC after recording evidence of the parties.

4. On the other hand, learned counsel for the respondent has not opposed the prayer made by learned counsel for the petitioner.
5. Considering the submissions made by learned counsel for the parties, considering the nature of dispute exists between them and that the respondent raised her ground that though the respondent appeared in the proceeding before the learned Family Court but she was not being properly communicated by the amicus. It is also a ground that the

respondent approached before the Hon'ble Supreme Court for transfer of the proceeding from the Family Court, Raipur to the Family Court, Gondia in which an interim order was passed on 09.03.2026, however, due to lack of proper communication, it could not be informed to the petitioner as well as the learned Family Court, Raipur and the learned Family Court has passed the ex-parte judgment and decree on 27.03.2026. When the parties are willing to lead evidence to that effect, as to whether they were properly communicated with the order passed by Hon'ble Supreme Court or not, the learned trial Court shall record their evidence and provide the opportunity to prove their contentions so that a proper and effective adjudication may be done.

6. Since the respondent have no objection in recording the evidence of the parties and only thereafter, the learned trial Court may decide the application filed under Order IX Rule 13 of CPC, this Court deems it appropriate to direct the learned Family Court to provide opportunity to the parties to lead their evidence and then decide the application filed by the respondent under Order IX Rule 13 of CPC.
7. Accordingly, the impugned dated 23.07.2026 (Annexure P-8) is **set aside**. The learned Family Court is directed to decide the application filed by the respondent under Order IX Rule 13 of CPC after recording evidence of the parties, after providing proper opportunity of hearing to the parties, in accordance with law in expeditious manner.
8. With the aforesaid observation, the writ petition is **allowed**.

Sd/-
(Ravindra Kumar Agrawal)
JUDGE