

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 1083 of 2015**

- Krishna Kumar Sahu S/o Late Shri Vishram Sahu, Aged About 53 Years R/o Village Bhansi, Police Station Bhansi, Civil & Revenue District South Baster, Dantewada, (CG).

---- **Petitioner****Versus**

- Smt. Janki Sahu W/o Krishna Kumar Sahu, Aged About 45 Years R/o C/o Mohan Vijay Tex Advisor 37, Second Flore Bharat Mata Parisar, Telghani Naka, Raipur, Civil & Revenue District Raipur, (CG)

---- **Respondent**

For Petitioner	: Mr. Paras Mani Srivas, Adv.
For Respondent	: Not noticed.

Order On Board**04/01/2016**

1. Heard on admission.
2. The petitioner has filed instant writ petition against the order dated 2-12-2015 by which the court below has allowed the application under Order 9 Rule 9 read with Section 151 of the Code of Civil Procedure (in brevity 'C.P.C.') to set aside the order for ex-parte proceeding against the defendant/present respondents dated 30-9-2015.
3. Facts of the case in brief are that Civil Suit No. 14-A/2013 (Krishna Kumar Sahu -v- Smt. Janki Sahu) is pending before the Additional District Judge, FTC, South Bastar, Dantewada. The parties are husband and wife. The present petitioner had filed the civil suit under Section 13 of the Hindu Marriage Act for divorce. The said civil suit was listed for hearing on 30-9-2015. On the said date, the non-applicant/ respondent was not represented though served. The court below on 30-9-2015 proceeded ex-parte and listed the matter for final argument (ex-parte) on 27-10-2015. Immediately on the next date i.e. 1-10-2015, an application under Order 9 Rule 7 read with Section 151 of the C.P.C. was filed by the respondent/non-applicant to set aside the order of ex-parte proceeding on the ground that the non-applicant/

respondent is a woman residing presently at Raipur. As she felt unsafe in her personal appearance before the Dantewada court, she had sent courier to her lawyer for her representation in the matter. The same is received on 30-9-2015 at about 4.30 pm. Hence the counsel could not appear before the court below to represent her and order for proceeding ex-parte was already passed. On the next date, the application has been filed along with affidavit of the counsel for the non-applicant/respondent. After considering the entire facts, the court below vide order dated 2-12-2015 set aside the order for proceeding ex-parte and gave opportunity to the respondent for hearing and fixed the date for written statement.

4. On considering the entire facts, it emerges that both the parties are husband and wife. The petitioner/applicant had filed a suit for divorce. The respondent is residing at Raipur far away from Dantewada and very next date of the order, her counsel filed an application along with affidavit of the counsel. The petitioner has satisfactorily explained the cause of non-appearance before the court below.
5. Upon consideration of entire facts, I do not see any illegality or impropriety in the impugned order passed by the court below and I am not inclined to entertain instant writ petition by invoking the jurisdiction vested under Article 227 of the Constitution of India. The petition failed to make out a case worth admission and further hearing.
6. Consequently the petition fails and is dismissed at motion stage itself.
7. However the court below is directed to expedite the matter and disposed of the same as early as possible preferably within a period of six month from the next date of hearing subject to cooperation by the parties in the matter.
8. No order as to costs.

Sd/-
Chandra Bhushan Bajpai
Judge