

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 34 of 2016**

- Bhusan Lal Dewangan S/o Shri Kartikram Dewangan, Aged About 50 Years, Sub Divisional Officer, Office Of Commissioner Of Chhattisgarh Rural Development, Civil Lines P. S. Civil Line, District Raipur (Chhattisgarh)..... (Applicant)

---- Petitioner**Versus**

- Smt. Nidhi Dewangan, W/o Shri Kisan Dewangan, Aged About 24 Years, R/o Flat No. 501, Block A. K. B. R. Twins, Paradise Raghavendra Colony, Varun Bazar, Behind Show Room, Kondapur, Hyderabad (Non Applicant)

---- Respondent

For Appellant	Shri Vinay Pandey and Shri R. K. Bhagat, Advocate
For Respondent	Shri Shivendu Pandya, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice Arvind Singh Chandel****Order On Board By****Prashant Kumar Mishra J.****17/07/2017**

1. This is an appeal by the father against rejection of his application under Order 9 Rule 13 CPC for setting aside the *ex parte* order dated 27.02.2015 passed by the Family Court, Dhamtari along with the respondent's application for

grant of marriage expenses.

2. Indisputably, the appellant is working as Class-I Gazetted Officer in the capacity of Sub Divisional Officer, Office of Development Commissioner, Chhattisgarh Rural Road Development Agency, Raipur and that his marriage with the respondent's mother was solemnized more than 20 years back, out of which respondent Nidhi Dewangan was born on 10.10.1989. It is also not in dispute that during the respondent's childhood, the appellant and his wife divorced, therefore, the respondent was brought up by her mother, who works as a teacher in the School Education Department.
3. The respondent moved an application under Section 20 (3) of the Hindu Adoptions and Maintenance Act, 1956 seeking expenses of Rs.5 Lakhs for her marriage. In the said proceeding, the appellant appeared and contested the application by submitting his reply as also affidavit under Order 18 Rule 4 CPC of himself and one of his witness, however, at the stage of cross objection of the respondent Nidhi Dewangan's witness, he remained absent, therefore, the Family Court proceeded ex parte on 23.02.2015. In the final order passed on 27.02.2015, the Family Court considered all the relevant aspects of the matter and decided to direct the appellant to pay an amount of Rs.3

Lakhs for the marriage expenses of the respondent.

4. Learned counsel for the appellant would submit that on the date when he was proceeded ex parte, he was not well nor he could inform his counsel to remain present and inform the Family Court, therefore, the absence being bonafide, the Family Court should have set aside the ex parte order. He would further submit that even his lawyer was not well on the relevant date, therefore, the Family Court should have sympathetically adjourned the matter.
5. Per contra, Shri Pandya, learned counsel for the respondent would submit that the plea that on the date of hearing, the appellant was not well is absolutely false because on the said date he has attended his official duties, therefore, on such false plea, the Family Court rightly refused to set aside the ex parte order.
6. We have heard learned counsel for the parties and perused the material placed before us.
7. It appears, the appellant has contended in his application under Order 9 Rule 13 CPC that he had suffered injuries on his leg and his lawyer was also not well, therefore, the ex parte decree deserves to be set aside. However, the Family Court has observed in the impugned order that on the given date, he had not sought casual leave or medical leave from

his office and that he had attended the duties, therefore, the plea taken for setting aside the ex parte order is not substantiated.

8. The appellant who is a Class-I Gazetted Officer in the State Government is not expected of raising such false plea of sustaining the injuries preventing him to attend the hearing in the Court while at the same time he attended his duties in his office. Even otherwise the fact that he is the father of the respondent being not in dispute, it is his legal as well as moral obligation to incur the expenditures of his daughter's marriage. The argument that his daughter having already married on 08.02.2015, before the ex parte order was passed, she is not entitled for any expenses for marriage also fails to impress us, because once the marriage is fixed to be solemnized on a particular day, it cannot be deferred only because the appellant is contesting the application. In raising such plea, the appellant is trying to avoid his statutory as well as moral duties, even though he earns handsome salary as a Class-I Gazetted Officer and the respondent is not disentitled under any legal provision to claim such expenditure. Merely because the marriage has been performed during the pendency of the litigation, the application would not become infructuous nor the cause of action would eclipse because of the marriage having been performed during the interregnum.

9. Having considered the issue brought before this Court, we are not satisfied that the appellant could make out a ground for setting aside the ex party order. The trial Court rightly rejected his application under Order 9 Rule 13 CPC.
10. The present appeal has no substance, it deserves to be and is hereby dismissed.

Sd/-
Judge
Prashant Kumar Mishra

Sd/-
Judge
Arvind Singh Chandel

Nirala