

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 106 of 2015

- Purusottam Chandrakar S/o Chamanlal Chandrakar, Aged about 27 Years, R/o Purani Basti, (Near Home of Rakesh Guruji), P.S. Mahasamund, Tahsil Mahasamund, Civil and Revenue District Mahasamund (Chhattisgarh) (Non - Applicant) **---- Appellant**

Versus

- Smt. Himani @ Lalli Chandrakar, D/o Mahendra Chandrakar, W/o Purusottam Chandrakar, Aged about 25 Years, R/o Village Bhatapara (Kurud), Post Kurud, P.S. Jamul, Tahsil Durg, Civil and Revenue District Durg (Chhattisgarh) (Applicant) **---- Respondent**

For Appellant : Shri Manoj Paranjpe and Shri Vikram Dixit,
Advocates.
For Respondent : None.

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board By
Prashant Kumar Mishra, J.

04-08-2017

1. This is an appeal by the husband challenging the Family Court's judgment allowing the respondent/wife's application under Order 9 Rule 13 of the Code of Civil Procedure (for short 'the CPC'), consequently, setting aside the *ex-parte* decree of divorce dated 09-02-2015.
2. Shorn of unnecessary details, suffice it would be to mention that the divorce petition was filed on 05-09-2014, wherein notices were issued to the wife on which she appeared before the Family Court at Mahasamund. However, she being residing at Durg, at that point of time, she moved a transfer petition before this Court on 14-10-2014

bearing TPC No. 39/2014, wherein notices were issued to the appellant on 20-11-2014 and his counsel appeared at the time of hearing on 12-01-2015. In the meanwhile, the trial Court proceeded *ex-parte* on 02-12-2014 and eventually, the *ex-parte* decree of divorce was passed on 09-02-2015.

3. The respondent/wife filed an application under Order 9 Rule 13 of the CPC for setting aside the *ex-parte* decree on 09-03-2015 on the ground that her lawyer in the Trial Court informed her that since she had already preferred a transfer petition she is not required to appear before the Family Court. According to her, she bonafidely believed the counsel's statement, therefore, the mistake in not appearing before the Court occurred for which she is not responsible.
4. The Family Court allowed the application for setting aside *ex-parte* decree after finding the grounds mentioned in the application to be convincing.
5. Learned counsel for the appellant/husband would submit that remaining absent from the Court is not sufficient cause for setting aside the *ex-parte* decree. He would further submit that it is not a case where the respondent/wife was not served with the notice of the Court or that she was prevented by any sufficient cause to appear before the Court, therefore, the Trial Court should not have allowed the application under Order 9 Rule 13 of the CPC.

6. It is worth mention that the respondent/wife had entered appearance before the trial Court on 10-10-2014 and thereafter approached the High Court for filing the transfer petition for getting the proceedings transferred from Mahasamund to Durg. In course of hearing, we directed the Registry to produce record of TPC 39/2014 from which it is revealed that the transfer petition was, in fact, prepared on 14-10-2014 and the affidavit in support thereof was sworn in on 16-11-2014. However, for reasons best known to the lawyer engaged by the respondent, who is also a lawyer appearing for her in this appeal, but has chosen not to assist this Court, the transfer petition was not filed for about a month as it was actually filed on 17-11-2014. In the said TPC this Court issued notice to the appellant on 20-11-2014 making the rule returnable within four weeks. However, in between, the suit was posted for hearing before the trial Court on 02-12-2014 but the respondent/wife was advised not to appear before the Family Court during the pendency of her transfer petition, therefore, she did not attend the Court. As a result, since neither her counsel nor she herself appeared before the trial Court to inform about the pendency of the transfer petition, the Family Court proceeded *ex-parte* on 02-12-2014.
7. The transfer petition came up for hearing before the High Court on 12-01-2015 wherein the appellant was represented by his lawyer Shri Sunil Sahu and the respondent/wife was represented by her lawyer Shri Jaydeep Singh Yadav, but none of them informed this Court that the trial Court has already proceeded *ex-parte* on 02-12-2014. The

appellant's counsel was allowed three weeks' time to file reply to the transfer petition but even before listing of the transfer petition, the trial Court proceeded *ex-parte* on 09-02-2015.

8. Having gone through the record, we have formed an opinion that the lawyer engaged by the respondent/wife was playing hide and seek with her inasmuch she was advised that she need not appear before the Family Court because her transfer petition is pending, the filing whereof in the High Court was itself delayed by the above counsel and when learned counsel for both the parties appeared in the transfer petition on 12-01-2015, none of them informed this Court that the respondent/wife has already been proceeded *ex-parte* by the Family Court. Even if we presume that the events might have happened without connivance of lawyer, the fact remains that the respondent/wife was under bonafide impression that her presence is not required before the Family Court. Once the trial Court has believed her statement and has recorded finding of her bonafides, it is not to be disturbed merely because she has failed to examine her lawyer Shri Sanjay Singh who gave such advice to her. We are also persuaded to form positive opinion about the respondent's bonafides from the sequences of events mentioned by us in the preceding paragraphs of our order.
9. Considering the totality of the circumstances, we do not find any ground that the trial Court has committed any such illegality or irregularity in allowing the respondent/wife's application and setting

aside the *ex-parte* decree which needs interference by this Court in this appeal filed under Section 19(1) of the Family Courts Act, 1984.

10. Consequently, the appeal deserves to be and is hereby dismissed.

Sd/-
JUDGE
(Prashant Kumar Mishra)

Sd/-
JUDGE
(Arvind Singh Chandel)