

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8949 OF 2016

Mr. Deepak Surendra Kejriwal	..Petitioner
Versus	
Mrs. Nisha Deepak Kejriwal	
alias Miss. Nisha Surekha	..Respondent

Mr. S. S. Adyanthaya a/w Mr. M. S. Raje for the Petitioner.
Mr. M. V. More for the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 20th MARCH, 2017

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 27.05.2016 passed by the Learned Judge of the Family Court No.2, Pune. By which order, the application filed by the Respondent under Order 9 Rule 13 of the Civil Procedure Code (For short "CPC") for setting aside of the ex-parte decree obtained by the Petitioner came to be allowed and resultantly the ex-parte decree came to be set aside and the Marriage Petition being No.A-739 of 2012 came to be restored to file at the original stage.

2 The Petitioner and the Respondent were married on 11.07.2008. The Petitioner and the Respondent both are Software Engineers. The Respondent was working in Zensar, Pune and had left

India on an assignment to South Africa on 26.06.2011. It appears that the relations between the Petitioner and the Respondent were strained after their marriage. The Petitioner herein filed Marriage Petition No.A-739 of 2012 seeking divorce under Section 13(i-a) of the Hindu Marriage Act, 1955 i.e. on the ground of cruelty. The address of the Respondent in the cause title was mentioned as that of her parents at Kanpur as it was the case of the Petitioner that the Respondent had refused to give her address in South Africa to the Petitioner. It seems that attempts were made to serve the Respondent at her parents address in Kanpur. It seems that the Petitioner had also sent an email to the Respondent as regards the filing of the said Marriage Petition to her email account which was to the knowledge of the Petitioner. Since the Respondent was in South Africa, she could not be served with the summons in the Petition, nor was she served at the address of her parents in Kanpur. The said Marriage Petition proceeded ex-parte and resulted in the decree dated 08.08.2013 being passed by the Learned Judge of the Family Court. The Respondent filed a Family Court Appeal challenging the decree in this Court. A Division Bench of this Court disposed of the said Family Court Appeal in view of the fact that against the ex-parte decree the Respondent had a remedy by way of an application under Order 9 Rule 13 of the CPC by approaching the same Court which passed the decree. The Family Court Appeal was

accordingly disposed of by the Division Bench by order dated 13.08.2014. It is thereafter that the instant application was filed under Order 9 Rule 13 of the CPC for setting aside the ex-parte decree.

3 The sum and substance of the case of the Respondent was that the email sent by the Petitioner herein was bereft of the details of the proceedings as also it contained wrong information about the date when the Respondent was required to appear in the proceedings. It was therefore the case of the Respondent that she was kept in the dark regarding the Petition filed by the Petitioner herein and hence the ex-parte decree was obtained by the Petitioner by fraud. The said application was replied to on behalf of the Petitioner by reply dated 20.05.2015. The parties led evidence in support of their respective assertions. The Trial Court i.e. the Learned Judge of the Family Court having regard to the material on record has by the impugned order dated 27.05.2016 allowed the application filed by the Respondent under Order 9 Rule 13 of the CPC and set aside the ex-parte decree obtained by the Petitioner. The sum and substance of the reasoning of the Learned Judge of the Family Court, Pune was that the Petitioner though having knowledge of the fact that the Respondent was in South Africa as she had left for South Africa from the matrimonial house had given the address of the parents of the Respondent in Kanpur when he was very much aware that the

Respondent was not at Kanpur and had not sought to serve the Respondent through the embassy in South Africa. The Learned Judge also observed that though the email was sent by the Petitioner, the said email Exh.31 was bereft of the particulars as regards the number of the Petition and the Court number. The Learned Judge has observed that the summons were sought to be served at the office of Zensar Pune when he was aware that she was in South Africa. The Learned Judge lastly observed that the Petitioner had tried to misguide the Court by stating that the Respondent is in Kanpur. The Learned Judge of the Family Court therefore was of the view that the impugned decree has been obtained by the Petitioner by fraud and therefore is required to be quashed and set aside on the said ground. The Learned Judge accordingly set aside the ex-parte decree by the impugned order dated 27.05.2016.

4 The Learned Counsel appearing on behalf of the Petitioner Mr. S. S. Adyanthaya reiterated the case of the Petitioner as urged before the Trial Court. It was the submission of the Learned Counsel that the Respondent having failed to give her address to the Petitioner, the Petitioner was in dark about her whereabouts and therefore in the cause title had given the address of her parents. The Learned Counsel would seek to draw this Court's attention to the deposition of the Respondent, wherein according to him she has stated that she had not given her

address to the Petitioner and that she had not called up the Petitioner from South Africa on her mobile phone, and therefore it is the Respondent who has to blame herself for the ex-parte decree.

5 Per contra, the Learned Counsel appearing for the Respondent supports the impugned order. The Learned Counsel would contend that the Petitioner had deliberately given the address of the Respondent as that of her parents though he was aware that the Respondent was in South Africa on an assignment. The Learned Counsel would contend that though the email was sent, the email was bereft of any particulars. The Respondent was therefore not in a position to make arrangements for her appearance in the Court. The Learned Counsel would therefore submit that no interference is called for with the impugned order.

6 Having heard the Learned Counsel for the parties, I have considered the rival contentions. As indicated above, an ex-parte decree came to be passed against the Respondent as a consequence of she not being served with the summons in the said Marriage Petition. The case of the Respondent-wife that she did not acquire knowledge of the proceedings as she was not served with the suit summons or the copy of the Petition has commended acceptance to the Trial Court. The fact that

the Petitioner assuming that he was not aware of the address of the Respondent did not make any attempt to serve her through the embassy also cannot be lost sight of. It is impossible to accept that the Petitioner did not know the whereabouts of the Respondent when he has admitted that she had left for South Africa from the matrimonial house. The Trial Court was therefore right in observing that the Petitioner had tried to misguide the Court by stating that the Respondent is in Kanpur and that he has made every attempt to serve the summons on her. In my view, the discretion exercised by the Trial Court in setting aside the ex-parte decree cannot be faulted with having regard to the facts and circumstances of the case. The setting aside of the ex-parte decree would now result in both the parties being given an opportunity to contest the matter on merits. In my view, therefore, no interference is called for with the impugned in the writ jurisdiction of this Court. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]