

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Revision Application No.50 of 2015

Gurdas Laxmandas Harwani
Vs.
Sheela w/o Gurdas Harwani

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri Shantanu S.Khedkar, Adv. for applicant.
Shri N.A.Lalwani, Adv. for non-applicant.

CORAM : A.S.CHANDURKAR, J.
DATE : 27.02.2017

In view of notice for final disposal issued earlier, learned counsel for the parties have been heard at length. The applicant is aggrieved by the order dated 21.02.2015 passed by the learned Judge, Family Court, Akola, thereby allowing application moved by the non-applicant for setting aside the ex-parte decree for restitution of conjugal rights.

In a proceedings for restitution of conjugal rights initiated by the applicant, the non applicant was represented by her counsel, who remained absent in the said proceedings. The Family Court passed a decree in his favour on 02.04.2014. On 30.06.2014, the non-applicant filed an application for setting aside the ex-parte decree. This application was opposed by the present applicant. The non-applicant examined herself as well as her counsel, in support of her prayer. The applicant also filed his affidavit on record. After considering the entire material

on record, the impugned order setting aside ex-parte decree came to be passed.

Shri S.S.Khedkar, learned counsel for the applicant submitted that the impugned order has been passed without the requirements of the provisions of Order IX Rule 13 of the Code of Civil Procedure, 1908, being satisfied. He referred to the evidence of the parties and submitted that though the trial Court was convinced that the non applicant was negligent, it is still set aside the ex-parte decree. He, therefore, submitted that the impugned order was liable to be set aside.

The present application is opposed by Shri N.A.Lalwani, learned counsel for the non-applicant. He referred to the deposition of the non applicant's counsel, who stated that after 10th January, 2014, he had remained absent. He therefore submitted that the Trial Court was justified in setting aside the ex-parte decree.

After hearing respective counsel and after perusing the material on record, I do not find that the Trial Court committed any error while passing the impugned order. The records indicate that after 10th January, 2014, the proceedings were fixed on 28th February on which date no written statement order came to be passed. The applicant filed his affidavit on 15th March, 2014 and on the same day, right of the non applicant to cross-examine the applicant was forfeited. On 19th March, 2014 the proceedings were kept for filing affidavit of the non applicant and on 27th March, 2014 the case was fixed for arguments.

The deposition of the non applicant's counsel

indicates that he admitted that after 10th January 2014, he could not attend the proceedings. Thus, after considering the entire evidence on record, that the Trial Court has found that the case would fall under second clause of Rule 13 of Order IX of the Code. In that view of the matter, it cannot be said that the Trial Court committed any jurisdictional error while restoring the proceedings for fresh consideration.

In view of aforesaid, the Civil Revision Application stands dismissed. However, the proceeding in A-Petition No.130/2013 are expedited and the same shall be decided by the end of December, 2017.

JUDGE

Andurkar