

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14586 of 2010

=====

Kalimuddin Khan S/o Moinuddin Khan, resident of village- Dumari, P.S.- Manjhi,
Distt.- Saran. Petitioner/s

Versus

Asmetun Khatoon @ Ismt Ara @ Ismat Praveen W/o Kalimuddin Khan, D/o Md.
Sahabuddin Khan, resident of village- Girdanha, P.S.- Manjhi, Distt.- Saran.
.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Kishore Kumar Thakur, Adv.
For the Respondent/s : None

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 01-10-2018

This application has been filed for quashing the order dated 06.02.2010 passed by learned Sub-Judge-I, Saran at Chapra in Miscellaneous Case No. 12 of 2005 whereby and whereunder his prayer to dismiss the case as barred by limitation was rejected.

2. Heard learned counsel for the petitioner. Nobody appeared for the respondent.

3. The petitioner before this Court filed the aforesaid Title Suit No. 17 of 2003 on the file of Sub-Judge-I, Saran at Chapra for declaration that his marriage with the respondent was dissolved on 10.03.2002 and since then, the petitioner has no concern with the respondent. The said suit was decreed *ex parte* as per judgment dated 30.09.2004. The respondent after getting knowledge about the decree filed a miscellaneous case bearing No. 12 of 2005 for setting aside the *ex parte* decree on the ground that no summons or notice was served



upon her. The petitioner appeared in miscellaneous case and filed a petition to dismiss the said miscellaneous case as not maintainable, as it was filed after a delay of 193 days. It has been submitted that the judgment in question was passed on 30.09.2004 and the Miscellaneous Case No. 12 of 2005 was filed after expiry of 193 days. The respondent had full knowledge about the pendency of Title Suit No. 17 of 2003 as both the parties were at litigating term. The respondent (wife) had filed a maintenance case as well as a criminal case for the offence under section 498(A) vide Manjhi P.S. Case No.37 of 2002 in which the petitioner had filed anticipatory bail petition on the plea of divorce with effect from 10.03.2002 and so the respondent had full knowledge about the *ex parte* decree.

4. On going through the impugned order as well as *ex parte* judgment passed in Title Suit No. 17 of 2003, I find that the respondent has filed the miscellaneous case for setting aside the *ex parte* decree under Order IX Rule 13 of Code of Civil Procedure on the ground that no notice was served upon her. The learned court below in judgment dated 30.09.2004 at para 3 has stated about the manner of service of summons on the respondent. The court below has observed that the notices through registered post were issued to the respondent which did not return and so presuming the notices validly served fixed the case for *ex parte* hearing. Thus I find there



was no service report with respect to service of summons on respondent through registered post. The petitioner had examined Postal Peon in course of trial, but no postal acknowledgement or receipt has been marked as exhibit. The learned court below while rejecting the petition of the petitioner, has observed that the issue of limitation in filing miscellaneous case requires consideration of fact which can't be decided as preliminary issue and accordingly his petition was disposed of.

5. In view of above discussions I find that the court below has rightly rejected the petition as per impugned order and it requires no interference. This writ application is accordingly dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05/10/2018
Transmission Date	N/A

