

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 104 of 2015

- Upendra Kumar, S/o Sundar Lal Sahu, Aged About 35 Years, R/o Sonsari, Police Station Mulmulla, Tehsil Pamgarh, District Janjgir-Champa, Chhattisgarh

---- Petitioner

Versus

- Sukunya Sahu, W/o Upendra Sahu, Aged About 26 Years, D/o Rajkumar Sahu, R/o Nariyara, Tehsil Akaltara, At Present Resident of V-Type, Quarter Godripara, Chirmiri, District Koriya, Chhattisgarh

---- Respondent

For Appellant

Shri A. K. Sahu, Advocate

For Respondent

Shri Indra Sen Sahu, Advocate

Hon'ble Justice Shri Prashant Kumar Mishra

Hon'ble Justice Smt. Vimla Singh Kapoor

Order On Board by

Prashant Kumar Mishra J.

12/10/2018

1. This is an appeal by the husband under Section 19 (1) of the Family Courts Act, 1984 read with Section 28 of the Hindu Marriage Act, 1955 (henceforth 'the Act, 1955') challenging the legality and validity of the impugned judgment and decree passed by the Family Court granting decree of judicial separation under Section 10 of the Act, 1955.
2. Appellant preferred an application for grant of divorce under Section 13 of the Act, 1955 on 27.09.2014. We are not referring

to the allegations made in the plaint and the reply in the written statement for the nature of the order we propose to pass herein while disposing of this appeal. We are only referring to the proceedings drawn by the Family Court to highlight that the Family Court proceeded *ex parte* against the respondent in an improper and illegal manner vitiating the entire trial.

3. A perusal of the order sheet of the Family Court would demonstrate that till 14.05.2015, notice could not be served on the respondent wife. She appeared before the Family Court for the first time on 15.05.2015. On the said date, the Family Court directed the parties for mediation, which was conducted during the course of the day and was declared to have failed. The respondent submitted her written statement along with application under Section 24 of the Act, 1955 for grant of interim maintenance. Instead of fixing the matter for reply and arguments on the said application, the suit was fixed for framing of issues. When the matter was taken up on 02.07.2015, the Family Court proceeded *ex parte* in the absence of respondent wife. The trial Court did not take up the application under Section 24 of the Act, 1955 for grant of interim maintenance and straightway fixed the matter for recording *ex parte* evidence and thereafter the impugned judgment granting decree of judicial separation has been passed.
4. The appellant would challenge the impugned decree on the ground that instead of granting of decree of judicial separation, the trial Court should have allowed the application for grant of divorce under Section 13 of the Act, 1955; learned counsel for the

respondent has not filed any cross appeal or cross objection, yet he would also challenge the decree passed by the trial Court and would pray for allowing the appeal.

5. We have heard learned counsel for the parties and perused the record of the trial Court.
6. The impugned judgment and decree and the proceedings drawn by the trial Court suffers from twin defects, firstly the respondent could not have been proceeded *ex parte* on a date when the suit was fixed for framing of issues and secondly, the trial Court has never posted the application under Section 24 of the Act, 1955 preferred by the wife for grant of interim maintenance for reply and arguments. The trial Court was in hot haste to dispose of the suit and in its zeal to obtain such disposal, the trial Court has put aside all procedural proprieties. The impugned decree has been passed without giving proper opportunity to the respondent wife to defend the suit. The impugned judgment and decree deserves to be and is hereby set aside. The suit is remitted back to the trial Court for decision afresh on merits.
7. The appeal stands allowed in part in the above stated terms.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Vimla Singh Kapoor
Judge