

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****FAM No. 75 of 2015**

- Smt. Bhavna Gandeche W/o Jitendra Gandeche Aged About 24 Years R/o Village Bichhia, Near Guest House, Tahsil And District- Mandla, Madhya Pradesh

**---- Appellant****Versus**

- Jitendra Gandeche S/o Yashwant Lal Gandeche Aged About 31 Years R/o C-4, Indira Awas Colony, Fafadih Raipur, Chhattisgarh

**---- Respondent**


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For Appellant : Shri Abhishek Pandey, Advocate

For Respondent : Shri Parag Kotecha, Advocate

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**D.B.- Hon'ble Shri Justice Manindra Mohan Shrivastava****Hon'ble Smt. Justice Vimla Singh Kapoor****Order On Board****26/08/2019****Per Manindra Mohan Shrivastava, J.-**

This appeal is directed against order dated 08/05/2015 passed by the First Additional Principal Judge, Family Court, Raipur (CG) in Civil MJC No.06/2012 whereby appellant's application under Order 9 Rule 13 CPC for setting aside ex-parte judgment and decree dated 25/01/2012 has been dismissed.

2. The appellant was married to the respondent on 04/07/2006. The record shows that their marital life was mostly engaged in several litigations which included application for Restitution of Conjugal Rights, custody of child, divorce application etc. The appellant moved an application for Restitution of Conjugal Rights on 14/10/2009 and during pendency of the same, the parties entered into compromise

before the Magistrate in proceedings under Section 125 CrPC on 10/08/2010. Under the agreement, the appellant was to receive a total sum of Rs.3 lakhs at different stages contingent upon filing of application for grant of divorce by mutual consent. On 28/08/2010, the application for grant of divorce by mutual consent under Section 13-B of the Hindu Marriage Act, 1955 (for short 'the Act of 1955') was filed. In view of these developments, the appellant did not press her application and therefore, she was proceeded ex-parte resulting in rejection of application. Because of multiplicity of proceedings, the appellant could not appear in the pending divorce proceedings and she was proceeded ex-parte and ex-parte judgment and decree was passed on 25/01/2012. According to the appellant, during proceedings under Section 13-B of the Act of 1955, the respondent had expressed that he was inclined to resume marital life and in view of the aforesaid assurance, she did not appear, which led to passing of ex-parte decree.

3. Learned counsel for the respondent would, however, submit that the appellant's appeal is not maintainable as this appeal is directed against an order rejecting application under Order 9 Rule 13 CPC and not against ex-parte judgment and decree. He would submit that the learned Court below, has otherwise taken into consideration the entire circumstances of the case, number of litigations pending before the authorities and has come to the conclusion that the reason assigned by the appellant is not sufficient and that she herself is responsible for confusion, if any, she had.

4. During the course of arguments, learned counsel for the appellant submits that during the pendency of these proceedings, the respondent has contacted another marriage and in these circumstances, the appellant, instead of pressing the appeal, seeks for appropriate direction for payment of permanent alimony and / or maintenance under the law.

5. We find that the appellant is now not inclined to insist for Restitution of Conjugal Rights. As far as application for maintenance and permanent alimony is concerned, we find that the appellant has relied upon agreement entered into between the parties on 10/08/2010 under which, various amounts were to be received by her on fulfillment of certain conditions. If the case of the appellant is that she has not received the amount as per her entitlement under the said agreement dated 10/08/2010, it is open for her to take remedial proceedings against the respondent. With the said liberty, the appeal is dismissed.

Sd/-  
**(Manindra Mohan Shrivastava)**  
Judge

Sd/-  
**(Vimla Singh Kapoor)**  
Judge