

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 165 of 2018**

1. Smt. Maya Sagar W/o Manoj Sagar, Aged About 35 Years Occupation Service, R/o Gandhi Nagar, Post And Police Station Gandhinagar, Tahsil Ambikapur, District Surguja Chhattisgarh., Presently Residing At C/o Rakesh Garg, Mahapaur Para, Sai Mandir Road, Behind Rawat Residency, Ambikapur, District Sarguja Chhattisgarh.

---- Appellant**Versus**

1. Manoj Sagar S/o Palu Ram Sagar, Aged About 35 Years R/o Sagar Niwas, Sonumuda, Raigarh, District Raigarh Chhattisgarh.

---- Respondent

For Appellant
For Respondent

Shri Sushobhit Singh, Advocate
Shri Abhishek Saraf, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Smt. Justice Vimla Singh Kapoor****Judgment on Board****By****Prashant Kumar Mishra, J.****10/01/2019**

1. Appellant/wife is aggrieved by the impugned *ex parte* decree of divorce. Challenge is mainly on the ground that the appellant was never served with the notice issued by the Family Court and that the substituted service by way of paper publication was also made in a newspaper which does not have any circulation in Ambikapur where the appellant presently resides.
2. We have perused the record. The order sheet of the Family Court would demonstrate that the suit for divorce was filed by

the respondent/husband on 28-3-2017. The first notice issued by the Family Court remained unserved, as the envelope was returned with the remark '*incomplete address*'. Instead of directing payment of process fee on correct address the Family Court directed to issue fresh process fee by ordinary as well as by registered post on 29-4-2017, 19-5-2017 & 29-6-2017. The subsequent notice for service by registered post carried endorsement of the Postal Department that '*the addressee is not known*'.

3. The respondent/husband thereafter, moved an application under Order 5 Rule 20 of the Code of Civil Procedure, 1908 for substituted service, which was allowed on 11-8-2017 directing the respondent herein to serve the appellant herein by publication in a newspaper published from the place of residence of the appellant, however, in the last part of the order sheet, the Family Court mentioned that the notice be published in a newspaper published from Raigarh. The plaintiff got the notice published in daily newspaper 'Kelo Pravah' published from Raigarh.
4. Albeit the trial Court directed for service of notice by ordinary as well as registered post, but there is no report of service of notice by ordinary mode. The Family Court has not bothered to verify the record as to what happened to the notice issued by ordinary mode, which is served through the concerned District Judge.
5. Perusal of the record would reveal that no such notice by ordinary mode was ever issued by the staff of the Family Court. We have also found that the Family Court's order directing publication of notice is self-contradictory inasmuch as in the first part the direction is for publication of notice in a newspaper

published from the place of the residence of the appellant, but in the later part the respondent/husband was permitted to publish the notice in a newspaper published from Raigarh.

6. When the plaint itself carries the appellant's address showing her to be a resident of Gandhi Nagar, Ambikapur, the Family Court could not have directed publication of the notice in a newspaper published from Raigarh. That order being defective in nature, the subsequent publication of notice is also illegal and service of notice by substituted mode cannot be presumed when the notice itself has been published in a place where the appellant/wife does not reside.
7. From the above discussion, it is apparent that the impugned *ex parte* decree of divorce has been passed without serving notice of the plaint and other documents on the appellant/wife, therefore, the impugned judgment and decree of divorce deserves to be and is hereby set aside. Record be sent back to the Family Court forthwith for trial of the suit, in accordance with law and on its own merits.
8. Both the parties shall appear before the Family Court, Raigarh, on **11th February, 2019**.
9. In the result, the first appeal is allowed to the extent indicated above.

Sd/-

Sd/-

Judge

Judge

Prashant Kumar Mishra

Vimla Singh Kapoor

Gowri