

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

FAMILY COURT APPEAL NO.35/2017

Amit S/o. Deepak Sonkar
..VS..
Mini W/o. Amit Sonkar

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S. D. Khati, Advocate for the appellant
Shri R. R. Prajapati, Advocate for the respondent

CORAM : Z.A.HAQ AND
PUSHPA V. GANEDIWALA, JJ.

DATED : 27th September 2019

Heard.

This is an appeal under Section 19 of the Family Courts Act, 1984 challenging the order dated 22/05/2017 passed by the Family Court No.4, Nagpur in MJC No.80/2014 by which the application of the respondent-wife under Order IX Rule 13 of the Code of Civil Procedure is allowed.

2] It is stated that the appellant-husband filed a Divorce Petition No.A-1099/2013 before the Family Court and the same proceeded ex parte against the respondent-wife and accordingly ex parte judgment and decree of divorce came to be passed.

The respondent challenged the said ex parte decree under Order IX Rule 13 of the Code of Civil Procedure before the trial Court.

The trial Court, on the basis of evidence on record and the record of the original petition for divorce No. A-1099/2013 concluded that summons was not duly served on the respondent and accordingly set aside the ex parte decree. The impugned order of the Family Court is challenged in this appeal. The following point arose for our consideration.

“Whether the summons of the petition was duly served on the petitioner in Petition No. A-1099/ 2013 ?”

3] We have examined original record and the proceedings of Petition No.A-1099/2013 wherein order dated 11/03/2014 would reflect that the trial Court directed the suit to proceed ex parte as RPAD notice was received by the Court showing service on respondent and still the respondent remained absent. As per Order V Rule 9(4) where the defendant resides outside the jurisdiction of the Court in which the suit is instituted, the service of summons to the defendant shall be made as per Rule 21. Admittedly, at the relevant time, the respondent-wife was residing at Jabalpur, M.P.

In the impugned order, the trial Court noted that there was no bailiff report, no acknowledgment duly signed by the respondent-wife and no endorsement of ‘refused’ on the returned envelope. On the basis of

internal report, the trial Court in the original petition, proceeded ex parte.

4] The trial Court in the divorce petition A-1099/13 proceeded ex parte without satisfying itself about due service of summons to the respondent. The order of the trial Court in MJC No.80/2014 appears to be legal and proper and there is no infirmity warranting any interference. The appeal is devoid of merit, it needs to be dismissed and the same is accordingly **dismissed**.

Registrar (Judicial) is directed to ensure that record and proceedings of this matter is sent to the Family Court, Nagpur expeditiously.

(PUSHPA V. GANEDIWALA, J.)

(Z.A. HAQ, J.)