

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 98 of 2019

Smt. Bindia Tamrakar W/o Rajkumar Sao Aged About 25 Years, R/o Kedarpur, Ambikapur, Police Station And Post Ambikapur, District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Appellant

Versus

Rajkumar Sao S/o Late Charka Sao, Aged About 34 Years R/o Village Darbar Toli, Jahspur Nagar, Police Station And Post Jashpur, District Jashpur Chhattisgarh., District : Jashpur, Chhattisgarh

---- Respondent

For Appellant	:	Shri Anurag Singh, Advocate
For Respondent	:	Shri D.R. Minj, Advocate

**D.B. :Hon'ble Mr. Justice Manindra Mohan Shrivastava &
Hon'ble Mrs. Justice Vimla Singh Kapoor**

Judgment On Board

28/01/2020

Per Manindra Mohan Shrivastava, J.

1. This appeal is directed against order dated 02.01.2019 passed in Miscellaneous Civil Case No.1 of 2017 by which, learned Family Judge, Jashpur, has rejected appellant's application for setting aside ex-parte decree and judgment passed against the appellant-wife and in favour of the respondent-husband.
2. An application for grant of decree of divorce was filed by respondent-husband before the Family Court, Jashpur. On 3rd August 2016, appellant appeared before the trial Court and the order sheet recorded that the appellant was present and time was granted to appellant to file reply. Case was directed to be listed on 29.8.2016. Thereafter, as there was no appearance made by the appellant-wife, learned trial Court proceeded ex-parte, recorded evidence led by the respondent-husband and passed ex-

parte decree and judgment of divorce. Aggrieved by the same, an application for setting aside ex-parte judgment and decree was filed which too was rejected on 15.12.2017. An appeal was filed by the appellant-wife before this Court, challenging the order rejecting application for setting aside ex-parte judgment and decree. This Court noted that after filing of the reply, without affording the appellant, an opportunity to lead oral and documentary evidence, learned trial Court proceeded to reject the application. Therefore, the order dated 15.12.2017 was set aside and the matter was remanded to the trial Court to draw proceeding afresh in the matter of application for setting ex-parte judgment and decree. Thereafter, learned trial Court allowed the parties to lead oral and documentary evidence and passed impugned order dated 02.01.2019 rejecting application for setting aside ex-parte judgment and decree. This appeal is directed against the said order.

3. Learned counsel for the appellant would argue that appellant-wife has been defrauded and misled by respondent-husband. Referring to the contents of application under Order 9 Rule 13 CPC, evidence of the appellant-wife and that of the respondent-husband, it is argued that the appellant-wife has clearly stated in her application that when she appeared before the trial Court after notice, her husband/respondent, misled her by saying that proceedings of conciliation have been drawn and now a settlement has taken place between the parties and, therefore, it is on such misleading act, appellant could not appear before the Court on the next dates of hearing and thus was proceeded ex-parte. Learned counsel for the appellant-wife would argue that the appellant has emphatically stated in her evidence also that after a dispute had arisen between her and sister-in-law, she was brought to the Family Court by her husband and in the Court, her signatures were obtained and without reading the contents of the documents, she affixed her signature relying upon her husband. He would further submit that she has clearly stated that even thereafter, she was residing with her husband in a rental premise. She clearly deposed that she is willing to reside with her husband. Learned counsel for the appellant would also submit that the respondent-husband in his cross-examination has admitted that on the request of the appellant, he had allowed the appellant to reside in the rental premise. Learned trial Court adopted a

conservative approach in considering whether a sufficient cause was made out or not. It is settled legal position that while considering whether sufficient cause is made out or not, the Courts are required to consider the ground constituting such cause liberally so that interest of justice is advanced and a party does not suffer an adverse order without having an opportunity to contest the matter on its own merits.

4. On the other hand, learned counsel for the respondent-husband would submit that learned Court below has minutely examined the contents of the application for setting aside ex-parte decree, evidence led by the appellant and her own admission made in her cross-examination, which completely falsify the cause shown in application. He would submit that the cause shown by the appellant, if accepted, would amount to completely impeaching the credibility of the Court's proceedings and the sanctity thereof. Her statement is not only contrary and at variance with what has been stated by her in application but also improbable.
5. We have heard learned counsel for the parties and perused the records of the case.
6. The application for grant of decree of divorce was filed by the husband on 14th June 2016 and the notices were issued. The case was listed on 15.7.2016. As the appellant -wife remained unserved the case was adjourned for 3rd August 2016.
7. Order sheet dated 3.8.2016 records that the respondent-husband appeared along with his counsel, whereas appellant-wife herself appeared and sought time to file reply to the application of the husband. The order sheet records that the case was listed on the next date for reply of the appellant-wife. In the margin of the order sheet, which has been signed by learned Family Judge, the appellant herself has signed noting the date 29.8.2016 as the next date of hearing. Thereafter, when appellant did not appear on 29.8.2016 and subsequent dates, learned Family Judge proceeded ex-parte which eventually resulted in passing of an ex-parte judgment and decree in favour of respondent- husband.
8. In the application for setting aside ex-parte judgment and decree, in para-2 thereof, the cause shown is that when appellant appeared before the Court

after receiving summons, her husband and the counsel informed her that settlement proceedings have already been drawn and because of such statement she was misled and, therefore, she could not appear on the subsequent dates of hearing. In para-3, it has been stated by her that during the pendency of the case, she was residing with the husband in a very cordial atmosphere and thus she did not know regarding proceedings and passing of ex- parte judgment and decree. In another paragraph, it has been stated that she was informed by the husband and his counsel that case has been withdrawn.

Thus according to the appellant-wife, the reason why she did not appear on subsequent dates was that on the date when she appeared in the Court, she was informed by respondent-husband and her counsel that settlement proceedings have been drawn, dispute between the parties has settled and the respondent- husband has withdrawn the case. In her evidence, the appellant-wife comes out with a different version which is at variance with what has been stated by her in her application. In para-1 of her evidence she has stated that she was brought to the Family Court by her husband, her signatures were obtained. She does not know on which document she signed. She further deposed that at the time of putting her signature, she did not even read the contents of the documents and relying upon her husband, she signed document. In this entire evidence, it has nowhere been stated that in the Court that she was told by the husband and his counsel that settlement proceedings have been drawn and the dispute has been settled between the parties and the case has been withdrawn. In her cross-examination, she admits that she is VIIIth pass. She further admits that on the date she appeared in the Court, her counsel was also present and the Court Reader were present in the Court and in the proceedings of Prastutkar (Reader), she had signed the order sheet. She has further admitted that for the purpose of seeking proper advice, she remained in contact with her counsel and on the date of appearance, she had appeared in the Court along with his counsel Mr. Jitendra Verma. She has further admitted that for about 3-4 months after having come to know about passing of the ex- parte judgment and decree, she had not taken any steps nor approached any authority.

Thus, it is clear that the appellant-wife had appeared before the Court, signed order sheet, noted the next date of hearing and the order sheet clearly recorded that she is being granted time to file reply. As to what happened in the Court at the time of putting her signature, there is complete variance with what has been stated by her in her application under Order 9 Rule 13 and her evidence in the Court itself. She was accompanied and advised by her counsel who was also present and in his presence, she admits having signed the document. Appellant is a literate person.

9. In view of the above consideration, the cause shown by the appellant appears to be completely afterthought and false.
10. Though learned counsel for the appellant-wife stressed upon the manner in which learned trial Court hurriedly proceeded to pass impugned judgment and decree without even drawing proper conciliation proceeding and even though, we find that nowhere in the order sheet or in the records, there is any material to show that the parties were put to conciliation proceeding in terms of mandate of Section 9 of the Hindu Marriage Act before the Court, we cannot go into the merits of the case assailing judgment and decree in these proceedings. We have to keep our consideration confined only to the extent as to whether a sufficient cause is made out by the appellant for setting aside ex-parte judgment and decree.
11. In view of our consideration, we do not consider any good ground to interfere with the order passed by the Court below which, upon consideration of the evidence on record in the light of the pleadings, has correctly come to the conclusion that the appellant-wife has failed to show any sufficient cause for setting aside ex parte judgment and decree.
12. The appeal is accordingly dismissed. Let appellate decree be drawn.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge