

**C.O.4240 of 2019
(C.A.N. 1 of 2020)
(old C.A.N. 601 of 2020)**

**PRANAB BASU ROY CHOWDHURY VS. SMT.
SAMAPTI BASU ROY CHOWDHURY NEE MUKHERJEE
@ MOUSUMI BASU ROY CHOWDHURY**

**Mr. Kushal Paul
Mr. Saptarshi Dutt
.for the petitioner**

This revisional application has been filed against an order dated October 3, 2019 passed by the learned Additional District Judge, Fast Track Court-I, Barrackpur in Misc. Case No. 1 of 2006.

Matrimonial Suit No.330 of 2003 was decreed ex parte on September 1, 2003. The opposite party preferred an application under Order 9 Rule 13 of the Code of Civil Procedure being Misc. Case No.1 of 2006, along with the application for condonation of delay. The delay was about 850 days. Initially, the application under Order 9 Rule 13 of the Code of Civil Procedure along with the application for condonation of delay was dismissed by an order dated June 30, 2014 passed by the learned Additional District Judge, Fast Track Court-I, Barrackpur.

Being aggrieved, the opposite party filed an appeal before this Court which was registered as F.M.A. 2596 of 2015. F.M.A. 2596 of 2015 was allowed by an

order dated February 11, 2016 by this Court, upon setting aside the order dated June 30, 2014. The delay was condoned and the matter was remitted back to the learned Trial Judge for a decision on merits of the application under Order 9 Rule 13 of the Code of Civil Procedure. Thereafter, the application under Order 9 Rule 13 of the Code of Civil Procedure was taken up for hearing on merits.

The learned Court below allowed Misc. Case No. 1 of 2006 by an order dated October 3, 2019. Aggrieved by the aforementioned order, the petitioner/husband has moved this Court. The learned Court below framed the following issues.

“1. whether the summon and copy of plaint issued from this Court in Mat Suit No. 330 of 2003 for service upon the respondent/wife Smt.Samapti Basu Roy Chowdhury through process server of the Court was duly served and whether the report of the process server was in contravention of the provisions of Order 5 C.P. Code and whether the said report is trustworthy?

2. Whether the summon along with copy of the plaint in Mat suit No.330 of 2003 sent through registered post with A/D for service upon the respondent/wife Smt.Samapti Basu Chowdhury remarked by the postal peon as “refused” would be considered as duly served?

3. Whether the petitioner had the knowledge of the exparte order in favour of her husband and remarriage of her husband much ahead prior to filing of the Misc. Case?

4. Whether the exparte order of dissolution of marriage passed in Mat Suit no. 330 of 2003 liable to be vacated.?”

Upon going through the Process Server’s report dated March 27, 2003, the learned Court below

found that the signature of the witnesses on the summons which was pasted on the door of the opposite party to be insufficient and inaccurate.

Moreover, the description of the property on which the summons was hanged did not match with the location of the address which the Court took into consideration with the help of the internet. It was also not mentioned in the report that the opposite party refused the summons in presence of the witnesses and that was why the summons was allegedly hanged on the premises in question. Thus, the learned Court upon perusal of the evidence before it, came to a conclusion that the contentions of the Process Server regarding refusal of service by the opposite party was unconvincing and not proved. It also appears that the learned Court found that the provisions of Order 5 Rule 17 of the Code of Civil Procedure was not followed by the process server in this case. The provisions of Order 5 Rule 18 of the Code of Civil Procedure was also not followed, according to the findings of the learned Court below.

Thereafter, the learned Court below took into consideration the postal envelope sent by registered post. The postal articles also bore the endorsement 'refused'. The Post Master, Noapara Sub-Post office deposed that he had no knowledge as to who refused the postal articles. He further deposed that the signature of the

postman could not be identified. The concerned postman also did not turn up to depose.

The Court upon considering the materials on record came to a finding that the correctness of the endorsement of 'refusal' could not be proved and was fraudulently made by the postal department. Thus, on appreciation of evidence and on the basis of the depositions, the learned Court found that the refusal in this case was not good service. The Court also found on evidence that the husband even after the decree was passed, used to go to the wife's house twice a week till November 3, 2005, and this was reason enough to hold that the wife was not aware of the ex parte decree and the subsequent marriage.

On the basis of these facts and the evidence before the learned Court below, the learned Court below came to the conclusion that the wife could not have any knowledge of the ex parte decree and also did not have any opportunity to contest the suit due to non-service of the summons.

Once the learned Court below has considered the materials on record and considered the evidence adduced by the parties, this Court in exercise of superintending power under Article 227 of the Constitution of India, cannot scan the evidence or re-appreciate the same, even though another view was

possible. In this case, the power of superintendence by this Court does not include substitution of the views of the Trial Court. There is no blatant infirmity or irregularity in the order impugned, which would shock a reasonable man.

Under such circumstances, this revisional application is dismissed. The application C.A.N. 1 of 2020 is also dismissed accordingly.

The opposite party is at liberty to pray for appropriate orders for maintenance in the learned Court below, if permissible under the law.

This Court has not gone into the merits of the matrimonial dispute and the learned Court shall decide the same in accordance with law.

The learned Court below shall dispose of the suit as expeditiously as possible, preferably within a period of one year from the date of communication of this order.

It is made clear that time period fixed is mandatory and no unnecessary adjournments should be granted to either of the parties.

I am in agreement with the learned Advocate for the petitioner to the extent that the learned Court below ought not to have commented with regard to the integrity and honesty of the postal employees and the government department. Those were absolutely

unnecessary and the same is expunged from the order impugned. The order impugned is modified as above.

There will be however no order as to costs.

Urgent photostat certified copy of this order be given to the parties on priority basis, if the same is applied for.

(Shampa Sarkar,J.)

