

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****FAM No. 182 of 2019**

- Baijnath Gupta @ Guddu S/o Late Judavan Sao Aged About 28 Years R/o Village - Vishnubagan, Jashpur Nagar, Police Station And Tahsil Jashpur, District Jashpur Chhattisgarh.

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

- Smt. Manju Gupta W/o Baijnath Gupta Aged About 25 Years Present Address Father Shri Lalan Prasad, Resident Of Ward No. 7, Village And Police Station Kochas, Sasaram District Rohtas (Bihar)

**---- Respondent**

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| For Appellant  | :- | Mr. Rohitashva Singh, Advocate |
| For Respondent | :- | Ms. Laxmeen Kashyap, Advocate  |

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**Hon'ble Shri Justice Prashant Kumar Mishra**  
**Hon'ble Smt. Justice Rajani Dubey**  
**Order On Board**

**By****Prashant Kumar Mishra, J.****22/01/2021**

1. This appeal would call in question trial Court's order allowing respondent/wife's application under Order IX, Rule 13 of the CPC to set aside the *ex parte* decree of divorce passed by the trial Court on 23.01.2018.

2. Shorn off unnecessary details it will be sufficient to mention here that in a suit for divorce filed by the appellant-husband, the trial Court passed an order for issuance of summons on 10.11.2017 which remained unserved. Another summon was issued on 15.09.2017 which again remained unserved, whereafter, the trial Court, of its own, directed issuance of notice by publication vide its order dated 20.11.2017 without there being any application by the plaintiff under Order 5 Rule 20 of the CPC for issuance of notice by publication. Once the notice was published in the daily Dainik Jagran newspaper having circulation in the area where the respondent resides, the trial Court passed an *ex parte* decree of divorce.
3. In her application under Order IX Rule 13 of the CPC, the respondent pleaded non service of notice. Appellant denied the statement on submission that the notice having been served through publication, the *ex parte* decree cannot be set-aside. More so, when Order IX Rule 13 of the CPC provides that a decree passed *ex parte* cannot be set-aside merely on the ground that there has been an irregularity in the service of summons.
4. Learned counsel for the appellant would submit that the trial Court having satisfied that notice was served through publication, it ought not to have set-aside the *ex parte*

decree.

5. Learned counsel for the respondent would support the impugned order.
6. Having heard learned counsel for the parties and on minute perusal of the proceedings before the trial Court, we are satisfied that the impugned order does not call for any interference. We say so for the reason that the very foundation for service of notice by publication has its root in the order dated 20.11.2017 in which the trial Court, of its own, directed for service of notice by publication. Such proceedings without being satisfied that defendant is avoiding service of notice was not proper at the first instance. It is such an irregularity which makes the very foundation of publication shaky and more so when the proceedings before the trial Court relates to marital status of the party, the consequence of which they have to suffer through out the remainder of the life.
7. It is also to be seen that on 20.11.2017, the trial Court had also directed for service of notice through SP, Rohtas, Bihar by pasting the summons outside the house of the respondent. There is no information as to whether, the notice to be served by pasting was actually accomplished or not. It is thus apparent that the steps taken by the trial

Court for service of summons to the respondent, suffered from material defects.

8. In our considered view, the trial Court has rightly set-aside the *ex parte* decree. The appeal fails and is hereby dismissed.

SD/-

**(Prashant Kumar Mishra)**  
Judge

SD/-

**(Rajani Dubey)**  
Judge

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