

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA(MAT) No. 127 of 2020**

Vithika Mudliyar Wife Of Santosh Mudliyar, D/o Satish Sachchar, R/o 2-3, Sarva Sampanna Nagar Bichouli Hapsi Road, Kolbiya Kanvent School, Bichouli Hapsi Indore Kanadiya Road, Indore, Madhya Pradesh, Pin 452016

---- Appellant**Versus**

- Santosh Mudliyar S/o G. K. Ghanghoti Mudliyar, R/o 443/36, Near Railway Pump House, Vivekanand Nagar, Torwa, Bilaspur (Chhattisgarh)

----Respondent

For Appellant	:-	Mr. K. K. Khatri, Advocate.
For Respondent	:-	Mr. Neeraj Choubey, Advocate

Hon'ble Shri Justice P. Sam Koshy
Hon'ble Shri Justice Parth Prateem Sahu

Order On Board
(22.11.2021)

Per P. Sam Koshy, Judge

1. The present is an appeal under Section 19 (1) of the Family Courts Act assailing the judgment and decree dated 13.01.2020 passed in Civil Appeal No. 209-A/2019 whereby the learned Principal Judge, Family Court, Bilaspur has allowed the application under Section 9 of the Hindu Marriage Act, 1955 ordering the appellant herein to ensure restitution of conjugal rights with the respondent.
2. The impugned judgement is an ex parte order. It is this proceeding of ex parte and the ex parte judgement passed by the Court below which is under challenge in the instant case.

3. The contention of the appellant all along is that she has not been served with the notice which was ordered to be issued by the Court below before proceeding ex parte. Therefore, the proceeding of ex parte by the Court below is not proper, legal and justified and the impugned judgement therefore deserves to be set aside/quashed.
4. Opposing the appeal learned counsel for respondent referred to paragraph-3 of the impugned judgement whereby there is an observation by the Court below of the notice having been issued to the appellant as also there is a reply furnished by the appellant. Counsel for the respondent submits that in spite of proper notice if the appellant after filing of her reply in the Court did not further contest her case on merits, the proceeding of ex parte by the Court below cannot be found fault with and the appeal therefore should be rejected.
5. We have gone through the order sheets of the Court below. The proceedings drawn clearly reflect that on an earlier occasion notice was issued to the appellant. The notice also seems to have been duly served and the respondent i.e. the appellant herein had sent her reply to the proceedings by post which was taken on record by the Court below.
6. However, from perusal of the order sheets it further reflects that in the instant case the respondent, from the findings of the Court below itself, is a deaf and dumb girl. The Court below taking this fact into consideration had ordered for issuance of a fresh notice so that the parties could appear and record their evidence. The order for issuance of notice in this regard was passed on 16.10.2019 and the respondent-plaintiff was directed to pay the required Talwana for

issuance of notice. On perusal of record it appears that no fresh PF was paid by the respondent-plaintiff for issuance of fresh notice to the appellant, neither is there any report of the Court below reaching to the conclusion that notice issued in terms of the order dated 16.10.2019 has been duly served upon the appellant which could enable the Court below to proceed ex parte. The records were also perused by the learned counsel for respondent herein who too could not find any Talwana paid by the respondent- plaintiff after the order was passed by the Court below on 16.10.2019. This is also no report or acknowledgment received from the postal department which could show that the notice in terms of the order dated 16.10.2019 has been duly effected upon the appellant. In the absence of any such proof available on record firstly with regard to the payment of Talwana by the respondent-plaintiff as per the order of the Court below dated 16.10.2019 and secondly in the absence of any report available to show that in terms of the order of issuance of notice dated 16.10.2019 the notice was duly served upon the appellant, the proceeding of ex parte by the Court below and the passing of an ex parte judgement under Section 9 do not seem to be proper, legal and justified and the same deserves to be and is accordingly set aside.

7. The judgment and decree dated 13.01.2020 passed in Civil Suit No.209-A/2019 accordingly stands set aside/quashed. The matter stands remitted back to the Court below for proceeding further from the stage the Court below had proceeded ex parte against the appellant.
8. Learned counsel for appellant undertakes to remain present either in person or through a counsel before the Court below on 20th January, 2022. Hence, the records be sent back to the concerned Court below

forthwith for taking appropriate steps.

9. The appeal accordingly stands allowed.

Sd/-

(P. Sam Koshy)
JUDGE

Sd/-

(Parth Prateem Sahu)
JUDGE