

HIGH COURT OF CHHATTISGARH, BILASPUR
WP227 No. 708 of 2021

Vinod Kumar Gupta S/o Shri Ramlagal Gupta Aged About 34 Years Caste Teli, Occupation Business, R/o Main Road, Post P. S. And Tahsil Balrampur District Balrampur-Ramanujganj Chhattisgarh

---- Petitioner

Versus

Smt. Nidhi Gupta W/o Vinod Gupta Aged About 25 Years D/o Late Prabhudayal Gupta, Caste Teli, R/o Village Post Udhnapur, P. S. Khandgaon, District Koriya Chhattisgarh

-----Respondent

For Petitioner:

Shri AK Prasad, Advocate.

Single Bench:Hon'ble Shri Deepak Kumar Tiwari J
Order On Board

15.12.2021

1. This Petition has been filed to challenge the order dated 28.07.2021 passed by the 2nd Additional District Judge, Ramanujganj, District Balrampur, Ramanujganj (CG) in Civil Suit No.9-A/2019 whereby, the application filed by the Respondent/Non-Applicant under Order 9 Rule 7 CPC has been allowed and the *ex parte* proceeding drawn against the Petitioner was set aside.
2. Brief facts of the case are that that Petitioner/Applicant has filed an application under Section 13 of the Hindu Marriage Act, 1955 for grant of decree of divorce on the ground of cruelty in which, the Non-Applicant/wife has filed an application to set aside the *ex parte* decree and vide the impugned order, the lower Court has, by declaring her to be *ex parte*, set aside the same by imposing cost of Rs.200/-.
3. Learned Counsel for the Petitioner submits that the application filed under Order 9 Rule 7 CPC was barred by time and no application under Section 5 of the Limitation Act has been filed and in support of the same and

no affidavit was also filed. Therefore, the application was wrongly allowed by the trial Court ignoring the legal position, therefore, he prayed that the impugned order may be set aside.

4. Heard and perused the case minutely.

5. In view of the aforesaid material, in the family matters particularly, in matrimonial matters, the object of setting up of Family Court changed the approach radically different from that adopted in ordinary civil proceedings. In the present case, the Petitioner has filed a divorce Petition at Ramanujganj, District Balrampur and the Respondent/wife is residing in another District i.e. Korea at village Udhanpur, PS Khadgawan. It is also explicit from the order sheet dated 11.11.2020 that the trial Court issued a common direction due to pandemic and for that reason, the functioning of the Court was severally restricted. So the proceedings were adjourned till further orders.

6. In the present case, wife or her Counsel have not appeared. When the case was listed on 16.12.2020, 07.01.2021 and 15.01.2021 and thereafter, on 17.02.2021, such applications were moved. Though the wife/Respondent has not been paid any alimony by the husband, the trial Court allowed her application with a cost of Rs.200/-. To set aside the *ex parte* decree, the Petitioner/husband also challenged the said order by filing a Writ Petition. To set aside the *ex parte* order under Order 9 Rule 7 CPC, only good cause is to be seen. In the prevailing circumstances where the functioning of the Courts are badly affected and the wife is residing in another District and also not getting any alimony from her husband, this Court does not find any substance in this Petition. The impugned order is affirmed. Accordingly, the Writ Petition is dismissed.

Sd/-

(Deepak Kumar Tiwari)
JUDGE