

FMA 1621 of 2018

Ct-08

**Sri Rajesh Kumar Shaw
Vs.
Smt. Rekha Shaw**

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Mrs. Sohini Chakraborty
Ms. Prajaaini Das
... For the Appellant

Mr. Kumar Jyoti Tewari
Mr. Rajlakshmi Ghatak
... For the Respondent

The appellant is aggrieved by the Judgment and Order no. 25 dated 7th November, 2017 and Order No. 26 dated 18th November, 2017 passed by the learned Additional District Judge, 2nd Court at Sealdah in Misc. Case No. 8 of 2015 read with Section 5 of the Limitation Act.

The undisputed facts that emerged from the record and the submissions made on behalf of the parties, it is revealed that the husband was aware that the respondent/opposite party preferred an application being C.O 3096 of 2012 under Section 24 of the Code of Civil procedure before the High Court for transfer of the suit and the Hon'ble court by its order dated 6th September, 2013 was pleased to transfer said record to the learned District Judge at Alipore with a direction to transfer the Matrimonial Suit to a competent court at Sealdah. Accordingly, learned District Judge at Alipore transferred the Matrimonial Suit to the court of learned 2nd Additional District Judge, Sealdah for disposal. The parties were aware of the fact that henceforth the matrimonial suit would be heard by learned 2nd Additional District Judge, Sealdah and the learned Judge directed the

respondent/wife to issue summons/notice to the husband/appellant both ways i.e. by registered post and through process server. Summons were sent through registered post, which was returned with postal endorsement "not claimed" but there was no whisper regarding the summons sent through the process server. On the basis of the said report the trial court fixed the hearing of the suit ex parte on 29th April, 2014.

The contention of the appellant before the trial court that he had neither received any summons nor got any information from the postal peon. On 19th January, 2015 the husband went to Bankshal court in connection GR No. 1334 of 2004 under Section 498A/406 I.P.C and at that time the respondent/wife informed the husband that she already obtained a decree for dissolution of marriage in Matrimonial Suit No. 2841 of 2013 from the court of learned 2nd ADJ, Sealdah.

It is further alleged by the appellant that after enquiry it was found that matrimonial suit was decreed ex parte on 9th July, 2014, although the appellant submits that no notice was served upon him. If he had knowledge that the suit was transferred, he could contest the same.

Under Order 9 Rule 13 C.P.C it has been mentioned that no court shall set aside a decree passed ex-parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear.

It is noted that the appellant during cross-examination admitted that he was aware about the transfer of the matrimonial suit to Alipore

court to Sealdah court. So the submission of the appellant is clearly unacceptable.

In considering the application under Order 9 Rule 13 C.P.C the court has to see two things, one non-service of summons and secondly if the litigant is prevented by sufficient cause from not appearing on the date fixed in the court.

If a litigant is willfully absent by not participating in the proceeding on the date fixed, it cannot be contended and held that he was prevented by sufficient cause from appearing on the date fixed.

We have been informed by the learned counsel appearing for the respondent that following the dissolution of marriage, the wife had remarried in the mean time after the expiry of the statutory period of appeal.

On such consideration, we do not find any merit in the instant appeal.

FMA 1621 of 2018 thus fails and is accordingly dismissed.

(Ajoy Kumar Mukherjee,J.)

(Soumen Sen, J.)

