

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.227 of 2016

Gayatri Devi @ Mala W/o Ajay Kumar Vijeta D/o Jagarnath Thakur, r/o village - Upharaul, P.O. Chakmaruf, District – Vaishali, at Present R/o Aawarpur Chauk, near DBI Public School Campus, Sarsawati Coaching Center, District – Vaishali.

... .. Appellant.

Versus

Ajay Kumar Vijeta S/o Late Tapeswar Lal Vijeta, R/o Mohalla - Purani Gudari, Near Shanty temple, PS Town, District – Muzaffarpur.

... .. Respondent.

Appearance :

For the Appellant : Mr. Chandra Kant, Advocate.
For the Respondent : Mr.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)

Date : 02-05-2024

This Miscellaneous Appeal is directed against the Judgment and Decree dated 22.04.2015 and 30.04.2015 respectively passed by the Principal Judge, Family Court, Muzaffarpur, in Matrimonial (Divorce) Case No.370 of 2011, whereby and whereunder the Family Court has granted ex parte divorce to the respondent-Ajay Kumar Vijeta.

2. Being aggrieved by the aforesaid judgment, the present Miscellaneous Appeal has been preferred by the appellant-Gayatri Devi alias Mala, who is the wife of the respondent-Ajay Kumar Vijeta.

3. The appellant has challenged the aforesaid



judgment on the very ground that the notice has not been properly served on the appellant and in the absence of appellant, the Principal Judge, Family Court, Muzaffarpur, passed the order, which is not correct in the eye of law.

4. On the said score, we have already passed the several Judgments including the Judgment passed in M.A. No.136 of 2022 and M.A. No. 382 of 2021, where notice had not been properly served to the concerned party and consequently, ex parte order has been passed. There is already judicial pronouncement in the several cases in which ex parte order has been set aside in the light of the fact that the notice was not served in the manner known to the law. The present case is squarely covered by the aforesaid decisions passed by this Court in M.A. No. 136 of 2022 and M.A. No. 382 of 2021. We have already cited the Judgment of the Hon'ble Supreme Court rendered in the case of **Yallawwa v. Shantavva**, reported in **(1997) 11 SCC 159** in which it has been held that the trial court could not have almost automatically granted the application for substituted service without taking steps for serving the respondent by ordinary procedure as laid down by Order 5 Rules 12, 15 and 17 of the Code. It must be kept in view that substituted service has to be resorted as the last resort



when the defendant cannot be served in the ordinary way and the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service of notice or summon.

5. From the perusal of the record, we are satisfied that notice has not been served upon the appellant in the manner known to the law. We are not going to passing any order on merit of the present appeal. Order sheet of the Family Court regarding service of summons indicates that how casually and in a routine manner order has been passed as there is no whisper of any specific date to the extent that court has not satisfied itself that service of notice served upon the appellant-wife complete. The court has directly come to the conclusion that publication in newspaper is required and there is no whispering how court has not made specific opinion prior to invoking substituted service.

6. The present case is related with the matrimonial dispute concerning the divorce proceedings in which concerned court has to act in a sensitive manner as it connects the entire life of husband and wife against whom a decree of divorce has been sought.

7. In the present case, the Principal Judge, Family Court, Muzaffarpur decided the matrimonial case for ex parte



hearing without taking proper recourse which is mandatory requirement under statutory provision and in the said matter court should not follow mechanical approach for compliance of issuance of notice rather the court should take all statutory provisions into account which is expected about the prerequisites for exercise of power under Order 5 Rules 12, 15, 17 and 20 of the Civil Procedure Code regarding issuance of summon for appearance of the party.

8. Having regard to the facts and circumstances of the case, we are satisfied that the appellant-Gayatri Devi alias Mala was not duly served with the notice and the procedure adopted for directing the substituted service being vitiated, therefore, the ex-parte Judgment passed against the appellant-Gayatri Devi alias Mala deserves to be set aside. Accordingly, Judgment and Decree dated 22.04.2015 and 30.04.2015 respectively passed by the Principal Judge, Family Court, Muzaffarpur, in Matrimonial (Divorce) Case No.370 of 2011, is set aside and the present Miscellaneous Appeal is allowed. Matrimonial (Divorce) Case No.370 of 2011 is restored on the file of the Principal Judge, Family Court, Muzaffarpur. The matter is remitted back to the learned Family Court for decision afresh in accordance with law on its own merit within a period



of six months from the date of receipt/production of a copy of this Judgment, after giving ample opportunity of adducing evidence and hearing to the respective parties. Parties are directed to co-operate in disposal of Matrimonial (Divorce) Case No. 370 of 2011.

9. The trial court record be sent back to the learned trial court forthwith.

10. Pending Interlocutory Application(s) if any, stands disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	NA
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