

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.431 of 2021

Priyanka @ Priyanka Yadav, Wife of Om Prakash Yadav, Daughter of Sri Niwash Singh Yadav @ Sri Nivas, Village- Saryankota, P.S.- Narhi, Distt- Baliya, UP.

... .. Appellant/s

Versus

Om Prakash Yadav, Son of Mahendra Yadav Resident of Village- Garubandh, P.O.- Basantpur, P.S.- Itarhi, Distt- Buxar.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Dharmesh Kumar Shrivastava, Advocate
For the Respondent/s	:	Mr. Amit Kumar Pandey, Advocate
		Mr. Krishna Kant Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE RANA VIKRAM SINGH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

24 23-06-2026 1. This is an appeal under Section 19 (1) of the Family Courts Act, 1984 challenging an *Ex parte* judgment and decree passed in favour of the plaintiff/respondent against the defendant/appellant.

2. At the outset, we like to record that by virtue of an order dated 2nd April, 2026, we passed an order striking off the defence of the respondent for his non-compliance of Court's order. It is necessary to mention that the respondent was directed by an order dated 15.01.2026 and also by a subsequent order to deposit a Demand Draft of Rs. 2,65,000/- in the name of the wife.



3. Mr. Amit Kumar Pandey, learned Advocate appears on behalf of the respondent along with a demand draft of Rs. 2,65,000/- in the name of his wife.

4. The learned Advocate for the appellant submits that he accepts the demand draft No. 670789 on behalf of the appellant-wife and the same shall be paid to the wife in due course.

5. In view of such payment of demand draft, we recall the order of striking off defence of the respondent in the instant appeal.

6. It is submitted by learned Advocate for the appellant that the marriage was solemnized with the respondent on 31.05.2017, subsequently she returned to her parents' home (*Maayke*) on 30.07.2017. The husband filed a suit for divorce which was registered as Divorce Case No. 272 of 2018 on 26.10.2018 on the ground of cruelty as envisaged in Section 13 (1) (a) of the Hindu Marriage Act.

7. It is contended by the appellant that plaintiff/respondent sent the notice of the suit to a wrong address and showing wrong service of notice, he managed to get the decree of divorce against his wife *ex parte*. The appellant did not get any opportunity to contest the case in the Trial Court.



8. It is needless to say that an ex-parte order may be set aside against the defendant, if the defendant is able to show that summon was not duly served or that he was prevented by any sufficient cause from appearing where the suit was called for hearing. In the instant appeal the only substantial ground is that the summon was not served upon the appellant.

9. Considering such aspect of the matter, we are of the view that the Court of appeal is not within its scope to consider as to whether summon was procured and used fraudulently to get the ex-parte decree of divorce by the husband. This is well within the domain of Order 9 Rule 13 of the CPC. Therefore, the instant appeal is disposed off directing and given liberty to the appellant to file an application under Order 9 Rule 13 of the CPC within three weeks from the date of this order along with an application under Section 5 of the Limitation Act and if such application is filed, the learned Trial Court is at liberty to dispose off the application under Section 5 of the Limitation Act liberally however, without being over any observation passed by this Court in the judgment.

10. If the application under Section 5 of the Limitation Act is allowed, the learned Trial Judge shall examine as to whether notice of the suit was properly served upon the



defendant/respondent/appellant of the instant appeal or not and
to pass appropriate order in accordance with law.

11. As we did not find merit in the instant appeal, with
the following observations, the appeal is dismissed.

(Bibek Chaudhuri, J)

(Rana Vikram Singh, J)

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