IN THE HIGH COURT OF JHARKHAND AT RANCHI

F.A. No. 330 of 2023

Jahanara Khatoon @ Jahan Ara Khatoon, aged about 42 years, wife of Md. Asif Ali, resident of village Mazhartola, PO: Borio, PS: Borio (J), District Sahibganj ..… Defendant/Appellant

Versus

Md. Asif Ali, aged about 45 years, son of late Fakhruddin, resident of village Sakin Kulipara, PO: Sahibganj, PS Sahibganj (T), District Sahibganj. …… Plaintiff/Respondent

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CORAM: HON'BLEMR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE SANJAY PRASAD

For theAppellant : Mr.Gautam Kumar, Advocate;
Ms. Savita Kumari, Advocate
For the Respondent : Mr. Sabya Sanchi, Advocate;
Mr. Rakesh Kumar, Advocate

Dated: 20th March, 2026

1. The instant appeal under Section 19(1) of the Family Court Act, 1984is directed against the judgment dated 15.7.2023 and decree dated 28.7.2023, passed by the learned Principal Judge, Family Court, Sahibganj in Original Suit No. 63 of 2022, whereby and whereunder, the judgment has been passed with the decree of restitution of conjugal rights in favour of the plaintiff and against the defendant.

2. The brief facts of the case leading to filing of the petition filed under Section 281 of the Mohammedan Law by the plaintiff/respondent needs to be referred herein which are as under:

The Nikah between the parties was solemnized on 22.3.2015 according to Muslim rites and rituals. After marriage, the defendant came to her matrimonial house. After sometime of the marriage the wife started harassing the plaintiff physically and mentally and gradually she made

illicit relationship with one Mantu Shing @ Ravi Shankar Singh. It is further stated that on 24.07.2016, the defendant went to her maike after taking money, clothes and jewellaries. Even though, he forgave her all the evils the plaintiff states that he made efforts to bring back the wife but to no avail. The plaintiff is still ready to keep his wife. He had gone to the parental house of the defendant on 20.02.2022 and requested her to live with him but the defendant assaulted him with fist and slaps. The plaintiff had gone to the parental house of the defendant on 24.07.2016, 13.03.2022 and 14.03.2022 in order to bring her back. The plaintiff is still ready to keep his wife-defendant but the defendant is adamant and reluctant to come back. It is alleged that the wife-defendant left the husband-plaintiff without any reasonable cause and despite efforts refused to come back. The cause of action for the suit arose on 14.03.2022 when the defendant-wife refused to co-habit with the husband-plaintiff without any lawful cause.

Arguments advanced on behalf of the appellant:

3. The learned counsel appearing on behalf of the appellant has submitted that the judgment and decree passed by the learned Family Judge on the basis of consideration of five witnesses, namely, PW-1 Md.Asif Ali, PW-2 Md.Yasim Alam @ Golu, PW-3 Md. Sayeed, PW-4 Md.Jeb Alam and PW-5 Md.Imam Hussan.

4. It has further been contended that while passing the judgment and decree the learned family judge has not provided any opportunity to the defendant/appellant to defend the case as she has never received any notice and she had no knowledge about the present case.It has been submitted that

although notices have been issued twice but only on the basis of tracking report the notice has been acceptedto be validly served and the learned Family Judge has held the proceeding to be ex-parte by making a remark that even after issuance of notice upon the defendant-appellant herein, the defendant did not appear.

5. It has further been contended that the learned Family Judge has taken the issue very casually and without ascertaining the proper service report and even by not asking the party to go for the substituted service of notice, has held the proceeding to be ex-parte and passed the impugned judgment/decree contrary to her interest and, as such, vital rights have been taken away from the defendant-appellant to defend herself. Therefore, the impugned judgment/decree is fit to be quashed and set-aside.

Arguments advanced on behalf of the respondent:

6. While on the other hand, the learned counsel for the respondent-husband has submitted that twice steps have been taken by the learned family judge. The notice has also been sent through Speed Post, the tracking report has been placed before the learned Family Judge and the learned Family Judge based upon that tracking report which has substantiated the service of notice, has accepted the notice to be validly served, hence, held the proceeding to be ex-parte and, thus, it is incorrect on the part of the appellant to take ground that holding the proceeding to be ex-parte, suffers from an error.

7. The learned counsel for the respondent-husband has further submitted that the learned Family Judge has passed the judgment/decree after taking into

consideration the evidence of five witnesses and, hence, the same suffers from no error.

Analysis:

8. This Court has heard the learned counsel for the appellant andthe respondent and gone through the findings recorded by the learned Family Judge in the impugned judgment, trial court records including the order-sheets based upon whichthe leaned Family Judge has accepted that the notice has been validly served upon the defendant/appellant and decided the Suit ex-parte.

9. Since the appeal has been filed on limited ground of holding the proceeding to be ex-parte and, as such, this court is not going upon the testimony of the witnesses rather thought it proper to consider the rival submissions made on behalf of the parties, in order to reach to the conclusion as to whether holding the proceeding to be an ex-parte against the defendant, the appellant herein, is just and proper.

10. It is evident from the order dated 22.3.2022 passed in Original Suit No. 63 of 2022 which is the date of filing of petition under section 281 of the Mohammedan Law filed for restitution of conjugal rights.

11. The matter was posted on 2.4.2022 for hearing on the point of admission. The matter was heard on 2.4.2022 and the case was admitted with a direction to post the matter on 2.5.2022 for filing requisites.

12. The notice was issued on 26.6.2022 upon the opposite party, the appellant herein, but as per the service report the said notice has returned un-served. As such, the fresh notice was directed to be issued with a direction to file fresh requisites. The matter was directed to be posted on 15.7.2022.

13. Fresh notice was issued in pursuance of the order dated 26.6.2022. It is evident from the order dated 15.7.2022 that an attendance has been filed on behalf of the plaintiff, the appellant herein with tracking report of the notice.

14. The said tracking report has been accepted by the learned family judge by recording the order that notice has been delivered to the opposite party with a remark that opposite party is not yet present in the court. The matter has been directed to be listed on 3.8.2022 for ex-parte evidence. The matter thereafter was proceeded ex-parte.

15. The respondent-plaintiff to the suit was allowed to examine witnesses and after hearing the argument the judgment/decree has been passed, the subject matter of the present appeal.

16. It is also settled that the Court is required to issue notice for the purpose of securing appearance of the concerned parties. The procedure to secure appearance is provided under Order V of the Code of Civil Procedure, 1908. Section 18 of the Family Courts Act, 1984 provides the applicability of the procedural law as available in the Code of Civil Procedure, 1908.

17. The requirement, as per the law as provided under the Code of Civil Procedure, 1908 for the purpose of securing the appearance of the parties, it is the duty of the court to take all effective measures to secure the appearance of the parties concerned, i.e. by issuance of notice through registered post or through ordinary process and if on the basis of the settled procedure as laid down for securing the appearance, even the parties are not appearing, then the order is to be passed that too on the basis of application which is to be made by the party to go for the substituted service of notice through paper publication.

18.This Court is conscious with the settled position of law that the *ex-parte* hearing is the requirement as per the statute but before reaching to such conclusion, it is bounded duty of the concerned court to take effective steps for service of notice upon the concerned party so that the appearance must be secured. However, even if effective service of notice is being taken but the concerned party has chosen not to appear then the recourse is to be taken by switching over from the mode of service of notice by way of paper publication.

19. Thereafter, the court is to post the matter for ex-parte hearing on the principle that if the party, even after service of the notice, has chosen not to appear then the other party why to suffer.But it is also equally settled that before switching over to the mode of substituted service of notice, the court has to wait for the service of notice and the same is to be based upon the valid report of the process server, so as to take a final call to allow the party concerned to go for the substituted service of notice.

20. We are of the view that the tracking report cannot justify proper service of notice. Even accepting that tracking report was placed before the concerned court then also it was the bounden duty of the learned Family Judge, being the court of law, to go to serve the notice through the jurisdictional police station for the purpose of ascertaining the fact about the service of notice. The another undisputed process, in a case of non-appearance in a situation where the appearance is being evaded then also the court of law is to go for the substituted service of notice by publishing the contents of the case at the place where the concerned party is residing. It is only thereafter the concerned court being adjudicator of the issue is supposed to come to the conclusion of deemed service of notice upon the opposite party.

21.There is wide difference in between valid service and deemed service and before reaching to the conclusion of deemed service all the parameters laid down in the Code of Civil Procedure strictly to be adhered to. If there will be any bypass of the process and in absence thereof any adjudication is being made then it is nothing but miscarriage of justice.

22. It requires to refer herein that the primary function of a Court is to adjudicate the dispute between the parties on the basis of substantial justice. A court's duty is to deliver substantial justice, meaning ensuring fair outcomes based on merits. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizens under personaland other laws. The procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify the miscarriage of justice.

23. The Hon'ble Apex Court in the case of ***Sugandhi v. P. Rajkumar, (2020) 10 SCC 706*** has specifically observed that the procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation, relevant paragraph of the aforesaid order is being quoted as under:

> *"9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party,*

> *courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under sub-rule (3)."*

24. In the case of ***Jasraj Inder Singh v. Hemraj Multanchand,(1977) 2 SCC 155*** the Hon'ble Apex court has observed that "Justice is truth, is beauty and the strategy of healing injustice is discovery of the whole truth and harmonising human relations. Law's finest hour is not in meditating on abstractions but in being the delivery agent of full fairness. This divagation is justified by the need to remind ourselves that the grammar of justice according to law is not little litigative solution".

25. Justice is nothing but a manifestation of the truth. It is truth which transcends every other action and when procedural law stands in the way of the truth, the Court must find a way to circumvent it. Similarly, when substantive law, as it appears, does not facilitate the emergence of the truth, it is the paramount duty of the Court to interpret the law in light of its teleos. Such an exercise is warranted in a higher degree, particularly while considering a social welfare legislation, reference in this regard be made to the judgment passed by the Hon'ble Apex Court in the case of ***Om Prakash @ Israel @ Raju @ Raju das Vs. Union of India & Anr. 2025 INSC 43***.

26. Further it needs to refer herein that the case which is related to the matrimonial dispute concerning annulment of marriage or divorce proceeding

is a serious matter and it connects entire life of husband and wife against whom a decree for declaration of nullity or divorce has been sought. In the said matter, the court should not follow mechanical approach rather the court should take all statutory provision into account which is expected for appearance of the party.

26. This Court is dealing with the issue of matrimonial dispute where the valuable right to defend is available to the opposite party to the Suit and if the procedure which has been adopted by the learned Family Judge, putting the case for ex-parte proceeding and thereafter passing the judgment /decree, will be approved then it is nothing but miscarriage of justice so far as the appellant-wife is concerned who is the defendant to the Suit.

28. This Court, based upon the aforesaid as has been referred hereinabove that the appellant being the wife and a contesting party upon whom the allegation has been levelled by filing an application under the Hindu Marriage Act, 1955, and as such, she ought to have given all effective opportunities to contest the case by taking effective measures for the purpose of securing her appearance.

29. This Court, in exercise of the appellate jurisdiction, is of the view that the learned Family Judge while posting the matter for ex-parte hearing has not taken the proper recourse for appearance of the opposite party available in the statute and has erred in passing the impugned judgment and decree. As such, the impugned judgment and decree needs interference on the ground of providing an opportunity to the defendant /wife to defend herself (the appellant herein).

30. Accordingly, the impugned judgment dated 15.7.2023 and decree dated 28.7.2023 passed by the learned Principal Judge, Family Court, Sahibganj in Original Suit No. 63 of 2022 are hereby quashed and set-aside.

31.In consequence thereof, the Original Suit No. 63 of 2022 is restored to its original file.

32. The learned counsel(s) appearing for both the parties have undertaken to put their appearance before the learned Principal Judge, Family Court, Sahibganj within three weeks from the date of receipt of the copy of this order.

33. The learned Principal Judge, Family Court, Sahibganj is directed to decide the issue on its own merits within six months taking into consideration the fact that the Suit is of the year 2022.

34. Accordingly, the instant appeal is allowed and disposed of.

35. Pending IA(s), if any, stands disposed of.

(Sujit Narayan Prasad, J.)

(Sanjay Prasad, J.)

Jharkhand High Court
Dated:20.3.2026
KNR/**A.F.R.**

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