

Soma Ray Vs. Uttam Kumar Ray

Soma Ray Vs. Uttam Kumar Ray

SooperKanoon Citation : sooperkanoon.com/520123

Court : Jharkhand

Decided On : Jul-22-2008

Reported in : [2008(4)JCR56(Jhr)]

Judge : M.Y. Eqbal, J.

Appellant : Soma Ray

Respondent : Uttam Kumar Ray

Disposition : Application allowed

Judgement :

M.Y. Eqbal, J.

1. Heard the learned Counsels appearing for the parties.
2. This application under Article 227 of the Constitution is directed against the order dated 17.1.2008 passed by the District judge, Chaibasa in Misc. Case No. 06 of 2007 whereby he has refused to set aside the ex parte decree passed in Matrimonial Suit No. 07 of 2005 filed by the respondent under [Section 13 of Hindu Marriage Act.
3. From perusal of the impugned order, it transpires that the Court below held that notice by ordinary process was sent and was affixed on the door of the house of the petitioner. Thereafter, registered notice was also sent, but the same was

returned with endorsement that the petitioner always not met. Finally, the notice was published in the newspaper. In spite of that, the petitioner did not appear in the suit which resulted in ex parte decree.

4. The case of the petitioner was that the suit for divorce was filed against her but she had no knowledge about the suit and notice. It was only in the criminal case, the said fact was disclosed by the respondent-husband.

5. Mr. P.C. Roy, learned Counsel appearing for the respondent, relied upon a decision of the Supreme Court reported in (2006) 6 S.C.C. 456 and submitted that when there is a fraudulent avoidance of notice by the party, then the presumption would be of service of notice. The said decision, in my opinion, does not apply in the instant fact. Neither there is any evidence by the respondent nor there is any reason recorded by the Court below while directing service of notice by publication in the newspaper that the petitioner has been fraudulently, deliberately and intentionally avoiding to receive the notice.

6. Be that as it may, it would be great injustice and hardship to the petitioner-wife if the husband is allowed to obtain ex parte decree of divorce behind the back of the wife,, particularly when there is no cogent evidence that the wife deliberately and intentionally avoided to receive notice. This aspect of the mater has not been considered by the Court below while rejecting the application for setting aside the ex parte decree. In the aforesaid premises, the impugned order, therefore, cannot be sustained in law. This application is, therefore, allowed and the impugned order is set aside. Consequently, the ex parte decree is liable to set aside.

7. The petitioner undertakes to appear in the suit within two weeks from today and further undertakes to appear on each & every date. The petitioner will also file written statement within two weeks thereafter. After filing of the written statement by the petitioner, the Court below shall proceed with the hearing of the suit and dispose it of as expeditiously as possible and preferably within a period of three months.