



**HIGH COURT OF CHHATTISGARH, BILASPUR**

**FA(MAT) No. 18 of 2023**

- Smt. Karuna Sao W/o Shri Manendra Kumar Sao, Aged About 35 Years, R/o Mahalaxmi Enclave, Mahant Ghasiram Ward Dhamtari, District Dhamtari (Wrongly Mentioned By The Respondent In Application) Permanent Resident C/o Dharni Kumar Sao (Father) Shrinagar Colony Behind Radhaswami Satsang Bhawan Rudri Road Dhamtari, District Dhamtari (C.G.).

---- Appellant

**Versus**

- Manendra Kumar Sahu S/o Shri M. P. Sahu, Aged About 36 Years, R/o Mahant Ghasiram Ward Dhamtari, District Dhamtari Permanent Address - Sanjay Nagar Kanker, District Kanker (C.G.).

--- Respondent

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For Appellant : Mr. Santosh Kumar Pandey, Advocate.

For Respondent : Mr. H.A.P.S. Bhatia, Advocate.

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**Hon'ble Shri Justice Goutam Bhaduri**

**Hon'ble Shri Justice Sanjay S. Agrawal**

**Judgment on Board**

**Per Goutam Bhaduri J.**

**01/05/2024**

- 1) Heard.
- 2) The present appeal is directed against the ex-parte impugned judgment and decree dated 31/03/2022 (Annexure A-1) passed by the Family Court, Dhamtari, District Dhamtari (C.G.) in Civil Suit No. 15A/2022, whereby, the suit of husband/respondent for dissolution of marriage has been decreed and the marriage dated 29/04/2016 of Smt. Karuna Sao/appellant and Manendra Kumar Sahu/respondent has been dissolved under Section 13 of the Hindu Marriage Act, 1955 (in short "the Act, 1955") by the decree of



divorce.

3) Learned Counsel for the appellant would submit that the decree for divorce has been granted ex-parte. He would submit that no notice was served to the appellant-wife of the divorce petition filed before the Family Court under Section 13 of the Act, 1955. It is stated that even the notice issued to the appellant-wife by the Family Court was sent on the different address which was shown in the cause title of the petition, seeking divorce and double address was shown in petition. Therefore, no notice was actually served upon the appellant-wife and she could know the existence of the decree of divorce only, when the subsequent marriage was performed by the respondent-husband.

4) Per contra, learned Counsel for the Respondent opposes the submission and states that despite service of notice, the appellant-wife did not appear before the Family Court, Dhamtari, as such, the judgment and decree passed by the Family Court is well merited and do not call for any interference.

5) We have heard learned Counsel for the parties and perused the record.

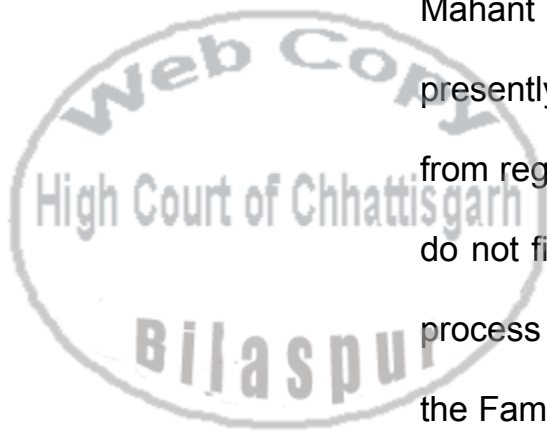
6) Record of the Family Court would show that the petition for divorce was filed on 10/01/2022 and thereafter, because of the Corona Pandemic, the cases were not heard and eventually, the case was taken up on 26/02/2022. The order dated 26/02/2022 would show that apart from the registered notice, ordinary notice was also ordered to be issued and the case was fixed on 26/03/2022. The





respondent only paid the summons by registered post and no notice was paid by ordinary process. Thereafter, on the basis of summons report of registered post, that the summons has returned with refusal by appellant ex-parte proceeding were drawn by the Family Court on 26/03/2022.

- 7) Perusal of the record of Family Court would show that though a registered notice was issued to the appellant-wife, but it was issued on single address though two addresses were shown in the cause title of the petition filed under Section 13 of the Act, 1955. In cause title, the address of appellant was shown as “Mahalaxmi Enclave, Mahant Ghasiram Ward Dhamtari” and it was further written that presently she is residing at “Shrinagar, Rudri Road Dhamtari”. Apart from registered notice, the ordinary notice was also ordered for. We do not find any document on record which shows that the ordinary process fee was also paid. Since, at the threshold the case before the Family Court proceeded ex-parte only on the basis of registered envelop returned with endorsement of refusal, it cannot be a conclusive fact that it was tendered to appellant-wife alone. No evidence of fact of ordinary summons is on record. In view of aforesaid facts, we deem it proper to give an opportunity of hearing to the appellant-wife to appear and to defend her before the Family Court.
- 8) It is a trite law that the service of notice is not mere formality and it should be real and meaningful so that the other party can represent himself before the court. When the two address were given but the notice is only served in one address it cannot be presumed that the





notice was served in the proper address. The Supreme Court in the matter of *Naresh Chandra Agarwal v. Bank of Baroda, (2001)*

**3 SCC 163**, at page **168** has held as under :

**“10.** From the facts narrated hereinabove, it is clear that the appellant is one of the legal heirs of the deceased 8th defendant and an application to bring him on record was made. Having made such application, it was the bounden duty of the plaintiff as also that of the court to see that all the legal heirs — the proposed legal representatives (including the appellant) were duly served. **It is not in dispute that at the relevant point of time when the notice of application was issued by the trial court, the appellant was serving in Gonda District and was not in Pilibhit to which address the notice of substitution was sent. It is not even the case of the plaintiff that at the time of service of notice the appellant, in fact, was present at the address to which the notice was sent even on a visiting basis. Therefore, it is reasonable to presume that the appellant was not served with the notice of substitution and the endorsement made therein as to the refusal of the service cannot be attributed to any act of the appellant. When a party is sought to be impleaded in a legal proceeding service of notice on such party cannot be a mere formality but should, in fact, be a reality.** In the instant case, neither the trial court nor the High Court gave any definite finding as to the service of notice on the appellant. The mere fact that when the appellant made an application for setting aside the ex parte decree, he happened to give his permanent residential address which incidentally happened to be the address to which notice of substitution was sent by the court, will not ipso facto lead to the conclusion that the notice of substitution was, in fact, served on the appellant. No inquiry or attempt was made by the trial court to find out the truth of the fact whether the notice of substitution was, in fact, served on the appellant. Even the plaintiff in its affidavit filed in opposition to the appellant's application did not deny the fact that the appellant was working in Gonda District at the relevant time.”

- 9) Accordingly, the appeal is allowed and ex-parte judgment and decree dated 31/03/2022 (Annexure A-1) passed by the Family





Court, Dhamtari, District Dhamtari (C.G.) in Civil Suit No. 15A/2022 is set aside. Both the party shall appear before the Family Court, Dhamtari on 26/06/2024 and thereafter, within a further period of 30 days the appellant-wife shall file her written statement and the Family Court thereafter shall proceed in accordance with law.

10) With the aforesaid observations, the appeal disposed of.

**-Sd/-  
(Goutam Bhaduri)  
Judge**

**-Sd/-  
(Sanjay S. Agrawal)  
Judge**

Chandrakant





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**HEAD NOTE**

The service of notice is not mere formality and it should be real and meaningful so that the other party may be represented appropriately before the Court.

नोटिस की तामिलि मात्र औपचारिक नहीं है और यह वास्तविक और अर्थपूर्ण होना चाहिए ताकि दुसरे पक्ष का न्यायालय के समक्ष उचित प्रतिनिधित्व हो सके।

