

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).4448 OF 2016  
(Arising out of SLP(C) No.8878 of 2012)

M.SUREH BALLAL . . . APPELLANT(S)

VERSUS

PADMALATHA . . . RESPONDENT(S)

O R D E R

1. Leave granted.
2. The challenge herein is to the order of the High Court dated 02.12.2011 by which the *ex-parte* decree of divorce in favour of the appellant-husband had been reversed. Aggrieved, this appeal has been filed.
3. From the materials on record it transpires that against the order of *ex-parte* decree of divorce, the respondent-wife had filed an application under Order IX, Rule 13 of the Code of Civil Procedure (for short, 'the Code') for

setting aside the *ex-parte* decree and had also challenged the said decree on merits by filing an appeal. While the application under Order IX, Rule 13 of the Code was kept pending by the trial Court, the appeal filed by the respondent-wife before the High Court proceeded and by the impugned order the *ex-parte* decree has been reversed. Thereafter the application under Order IX, Rule 13 of the Code, having become infructuous, has been withdrawn.

4. We have read and considered the order of the High Court. We have also heard the learned counsels for the parties. The High Court reversed the order of *ex-parte* decree of divorce on consideration of the merits of the case, namely, whether the allegations levelled does amount to cruelty within the meaning of of the said expression as appearing in Section 13 of the Hindu Marriage Act, 1955. In doing so, the High Court embarked upon an elaborate discussion

of the merits of the case without there being any rebuttal of the pleadings on cruelty and/or evidence adduced by the respondent-wife. In a situation where the decree under challenge was an *ex-parte* decree and in fact an application under Order IX, Rule 13 of the Code had been filed by the wife before the trial Court, the High Court, according to us, ought to have remanded the matter for a full-fledged trial instead of proceeding to consider the case on merits on the basis of the uncontroverted pleadings and unrebutted materials on record.

5. The said course of action not having been done and the same having commended to us, we adopt the same. Consequently, we set aside the order of the High Court and remand the matter for a *de-novo* adjudication by the learned trial Court after giving opportunity to the respondent to file her written statement and

after allowing the contesting parties to lead their evidence in the case. We also request the trial Court to decide the matter as expeditiously as possible.

6. The appeal consequently is disposed of in the above terms.

.....,J.  
(RANJAN GOGOI)

.....,J.  
(PRAFULLA C. PANT)

NEW DELHI  
APRIL 26, 2016

ITEM NO.5

COURT NO.7

SECTION IVA

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 8878/2012

(Arising out of impugned final judgment and order dated 02/12/2011 in MFA No. 766/2007 passed by the High Court of Karnataka At Bangalore)

M.SUREH BALLAL

Petitioner(s)

VERSUS

PADMALATHA

Respondent(s)

(with interim relief and office report)

Date : 26/04/2016 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI  
HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Petitioner(s) Mr. Basava Prabhu S. Patil, Sr. Adv.  
Mr. Shailesh Madiyal, Adv.  
Mr. Chinmay Deshpande, Adv.  
Mr. Amjid Maqbool, Adv.  
Ms. Shivani Srivastava, Adv.

For Respondent(s) Mr. S. N. Bhat, Adv.  
Mr. P.D. Chaturvedi, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeal is disposed of in terms of the  
signed order.

(Neetu Khajuria)  
Sr.P.A.

(Asha Soni)  
Court Master

(Signed order is placed on the file.)