

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

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RANI BHARDWAJ  
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Reason:

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Thereafter the application under Order IX, Rule 13 of the Code, having become infructuous, has been withdrawn.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

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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



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.)