

14th July,
2026
(AK)
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F.M.A. 259 of 2026
IA No: CAN 1 of 2026

Smt. Bipasha Paria @ Mondal
Vs.
Sri Kanak Kanti Paria

Mr. Hafizur Rahaman
Ms. Santi Das
Mr. V.K. Raj

...for the appellant.

Mr. Piush Chaturbedy, Sr. Adv.
Mr. Debasish Purkait

...for the respondent.

1. In view of sufficient arguable questions having been raised, the appeal is admitted, to be heard on the grounds taken in the Memorandum of Appeal.
2. Since the conspectus of the appeal is short, we take up the appeal itself for adjudication along with the connected application.
3. The present challenge has been preferred against an order whereby an application filed by the appellant/wife under Order IX Rule 13 of the Code of Civil Procedure, for setting aside *ex parte* divorce decree obtained by the respondent/husband, was itself dismissed on contest.
4. Learned counsel for the appellant argues that from the annexures to the supplementary affidavit as well as the stay application filed in connection with

the present appeal, it would be evident that immediately after obtaining the *ex parte* matrimonial decree, the respondent/husband issued an eviction notice to the New Town address of the appellant/wife, where she was residing then, thus proving that the respondent/husband all along had knowledge of the wife's residence at the New Town address.

5. Despite the same, no summons of the suit was served at the said address.
6. Learned counsel submits that the recording in the impugned order to the effect that the appellant/wife was served at both addresses was erroneous.
7. It is next argued by the appellant that the Order IX Rule 13 application was filed late due to the appellant/wife having no knowledge, nor any summons of the suit having been served on her during the relevant period.
8. Upon acquiring such knowledge, the appellant/wife immediately preferred the application under Order IX Rule 13 of the Code of Civil Procedure.
9. Learned counsel submits that the learned Trial Judge erroneously proceeded on the premise that the appellant/wife admitted in her evidence in connection with the Order IX Rule 13 application that her husband had mentioned about the

pendency of the divorce proceedings in his written objection filed in Case No.33 of 2013, which is the maintenance application filed by the appellant/wife under Section 125 of the Criminal Procedure Code.

10. In reality, it is contended, despite the matrimonial suit having been renumbered on the said date, the respondent/husband had erroneously given the original number of the suit, thereby misleading the appellant/wife, which prevented her from taking information regarding the suit.
11. Learned counsel for the appellant next argues that the learned Trial Judge did not take into consideration that Order V Rule 20 of the Code was resorted to at the stage of hearing of the suit without prior compliance under the previous provisions of Order V, which were mandatory pre-requisites for resorting to substituted service.
12. It is further argued that the court bailiff/process server was not examined at all in order to ascertain whether due service of summons was effected on the appellant/wife, thus vitiating the entire alleged service of summons on the appellant.
13. In such view of the matter, it is argued that the impugned order ought to be set aside and an opportunity to be given to the wife to contest the suit on merits.

14. Learned senior counsel appearing for the respondent/husband places reliance on the second proviso to Order IX Rule 13 of the Code of Civil Procedure, in conjunction with *Parimal vs. Veena alias Bharti*, reported at (2011) 3 SCC 545, where the principles laid down in the second proviso were reiterated and the Hon'ble Supreme Court was pleased to observe that the Legislature, in its wisdom, made the second proviso mandatory in nature and thus, it is not permissible for the court to allow the application under Order IX Rule 13 in utter disregard of the terms and conditions incorporated in the second proviso thereto.
15. Learned senior counsel also cites the self-same judgment for the proposition that in order to determine an application under Order IX Rule 13, the test that has to be applied is whether the defendant honestly and sincerely intended to remain present when the suit was called on for hearing and did his best to do so.
16. In the present case, the appellant/wife, despite having knowledge of pendency of the suit, did not making any endeavour to contest the same.
17. Thus, the benefit of Order IX Rule 13 ought not to be granted to her.

18. Learned senior counsel further places reliance on the copy of the written objection filed by the respondent/husband in the maintenance proceeding of the wife, from which it is evident that a copy of the written objection was served on the appellant/wife on August 28, 2014, whereas the application under Order IX Rule 13 was filed only in the year 2017.
19. Thus, the delay in filing the application remains unexplained.
20. Learned senior counsel argues that the orders of the learned trial Judge in connection with the matrimonial proceeding, also annexed to the supplementary affidavit filed by the appellant/wife, indicate that vide Order No.8 dated July 4, 2014, the Trial Court had recorded its satisfaction that due efforts were made to serve summons on the appellant in due process of law and that service was required to be made by the mode of substituted service under Order V Rule 20 of the Code.
21. In view of the appellant having not preferred any challenge against the said order, the same, it is submitted, has attained finality and cannot be reopened.

22. Upon hearing learned counsel for the parties, we find sufficient force in the arguments of the respondent.
23. The premise of the present challenge is that the appellant/wife did not have any knowledge of the suit at the relevant juncture.
24. However, such stand of the appellant is belied by the copy of the written objection filed by the respondent/husband in connection with Case No. M-93 of 2013 before the Judicial Magistrate at Baruipur, that is, the application filed by the appellant/wife under Section 125, Criminal Procedure Code.
25. From the very first page thereof, it is clear that a copy thereof was served on the learned Advocate for the appellant, from whose custody the said written objections comes, on August 28, 2014, about two and a half years prior to filing of the application under Order IX Rule 13.
26. In paragraph no.16 of the said written objection, the respondent/husband had mentioned in no uncertain terms that one matrimonial suit vide no.2465/2013 was pending before the learned District Judge at Alipore against the appellant/wife.
27. We find from the orders passed in the suit that the self-same suit, the number of which was given in

the written objection, had in the meantime been re-numbered as Matrimonial Suit no.174/2013, upon the same being transferred to the learned Additional District Judge, First Court at Alipore for adjudication.

28. However, the argument of the appellant that the previous number was disclosed erroneously even after the suit was re-numbered is specious and cannot be accepted.
29. Merely by searching in the Alipore court with the previous number of the suit, anybody and everybody could obtain information as to the current number thereof and its current status.
30. Hence, since the correct original filing number of the suit was disclosed by the respondent/husband to the appellant/wife as long back as on August 28, 2014, the appellant/wife cannot feign ignorance of the pendency of the suit at that juncture itself and could very well ascertain the current number and status of the said suit and have contested the same.
31. However, despite such opportunity, the appellant/wife waited till the suit was decreed *ex parte* before filing the present application under Order IX Rule 13 of the Code.

32. The second proviso to Order IX Rule 13, as reiterated in *Parimal vs. Veena (supra)*, is couched in mandatory negative language, stipulating that no court shall set aside a decree passed *ex parte* merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.
33. Although the specific knowledge of the defendant/appellant about the date of hearing is not found from the materials before us, nonetheless, it has been established beyond doubt that the appellant had knowledge of the pendency of the suit at least in the year 2014, from the written objection filed by the respondent to her maintenance application.
34. Hence, the mere irregularity in compliance of the pre-requisites under Order V Rule 19 and the prior provisions cannot be resorted to by the appellant to have an order under Order IX Rule 13 of the Code in view of the second proviso thereto.
35. In *Parimal vs. Veena (Supra)*, the Hon'ble Supreme Court categorically observed that it is not permissible for the court to allow the application in utter disregard of the terms and conditions

incorporated in the second proviso to Order IX Rule 13.

36. In the said report, the Hon'ble Supreme Court further took into consideration the presumption of service by registered post and burden of proof and held that the High Court in the said case erred in not appreciating the facts in the correct perspective as substituted service is meant to be resorted to serve the notice at the address known to the parties where the party had been residing last.
37. It was further held that it was nobody's case that the respondent/wife in the said case made any attempt to establish that there had been a fraud and collusion between the appellant and the postman and not a single document had been summoned from the post office nor was any attempt made by the respondent/wife to examine the postman.
38. The factual scenario as discussed in the cited report is similar to the present case, where the appellant/wife seeks to take shelter under alleged non-examination of the postal peon but herself did not make any endeavour to have the postal peon examined.
39. In view of the appellant having chosen not to appear in the suit and contest the service of

summons at the relevant juncture, there was no occasion for the court to examine the postal peon.

40. Thus, the substituted service under Order V Rule 20 of the Code, effected in respect of the summons of the suit in the present case, cannot be vitiated merely due to non-examination of the postal peon, for which no occasion had arisen at that juncture.
41. Rather, the law of evidence in India attaches a presumption of correctness to judicial acts.
42. In the present case, such presumption of correctness of the observations made by the court, while accepting due attempts on the part of the plaintiff/husband to serve summons and directing substituted service, has not been rebutted in any manner whatsoever.
43. Even otherwise, such allegations are confined to the domain of “irregularities” in service of summons at best, thus coming within the mischief of the second proviso to Order IX Rule 13 of the Code.
44. As such, the argument of the appellant regarding no service of summons having been shown to be effected at her New Town Address is neither here nor there, since it was the Baruipur address of the appellant/wife at which service of summons was duly sought to be effected and substituted service was also effected.

45. The Baruipur address was disclosed by the appellant/wife herself in her application under Section 125 of the Code of Criminal Procedure, which was never amended by her.
46. Thus, the ratio laid down in *Parimal vs. Veena* squarely applies to the present case.
47. In view of the above observations, we do not find any illegality or legal or factual error in the impugned order to justify interference by this court.
48. Accordingly, FMA 259 of 2026 is dismissed on contest, thereby affirming the impugned order dated August 26, 2025 passed by the learned Additional District Judge, First Court at Alipore, District- South 24 Parganas in Miscellaneous Case No. 2 of 2017.
49. Consequentially, CAN 1 of 2026 is also dismissed.
50. There will be no order as to costs.
51. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)