

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ FAO 376/2009

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Date of Decision: 30.03.2012

KRISHAN LAL

..... Appellant

Through : Mr. O.N. Sharma, Advocate

versus

SMT. MANJU

..... Respondent

Through : Mr. Baldev Singh, Advocate

CORAM:

HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J.

1. By way of present appeal, the appellant has challenged the impugned order dated 22.10.2009 passed by learned Addl. District Judge, Tis Hazari Courts, Delhi, by which application under order 9 Rule 13 read with Section 151 CPC filed by him praying for setting aside the *ex parte* divorce decree dated 24.02.2005 in HMA petition no.402/2003 has been dismissed.

2. The facts relevant for the disposal of present appeal are as under:-

Parties were married to each other on 11.04.1992 at New Delhi. The status of appellant was 'widower' at the time of marriage with respondent and the respondent was 'widow'. It was their second

marriage. Respondent/wife has two children from first marriage. An *ex parte* divorce decree was passed in favour of the respondent on 24.02.2005 by the learned ADJ, Delhi dissolving the marriage between the parties on the ground of cruelty and desertion i.e. under Section 13(1)(ia)&(ib) of the Hindu Marriage Act (hereinafter referred to as the Act). The appellant had moved an application under Order 9 Rule 13 r/w Section 151 CPC before the learned trial court alleging therein that he had come to know of the aforesaid judgment/decreed only on 09.07.2008 during the proceedings of case no.HMA 474/2007 which was filed by him in the court of learned ADJ, Delhi, against the respondent under Section 9 of the Act. It is alleged that the appellant was in constant touch with the respondent in other litigations i.e. the HMA no. 572/2002 under Section 9 of the Act which was dismissed in default on 11.03.2003, civil suit no.166/2003 decided on 28.11.2006 before the court of Shri Vipin Kumar Rai, Civil Judge, Delhi and one criminal case was pending disposal since 2002 in Gohana (Haryana) but the respondent never disclosed the factum of grant of divorce to the appellant. The appellant could have been served in aforesaid courts where the litigation between them was pending. It is stated that respondent/wife has given three addresses of the appellant in the divorce petition. Out of which, the address of Gandhi Nagar was left by him in 1993 and he had shifted to Govindpuri, Kalkaji, New Delhi i.e. second address. There the appellant had never received any summons of divorce petition. The third address mentioned is of Basai Darapur. Even that address is incorrect and the appellant was never served at the aforesaid address also. It is alleged that respondent/wife had also filed a revision petition against appellant

challenging the order passed against her by the Magistrate at Gohana Court at Sonipat. It is contended that the respondent could have served the appellant/husband with the summons of divorce petition at Gohana court and there is no reason why the summons of divorce petition were not served there. It is alleged that the respondent/wife never wanted to serve the appellant/husband and by manipulation she had got *ex parte* decree of divorce.

3. The said application was opposed by the respondent/wife by filing a reply wherein it is alleged that the appellant/husband was served with the summons of divorce petition by registered AD post at Gohana address for 02.01.2004 but he did not appear intentionally. He was also served by way of publication in the newspaper 'Dainik Tribunal', Hindi edition, for 29.03.2004 despite that he did not appear. The respondent has also alleged that appellant had deliberately chosen not to appear. The respondent further took the stand that the *ex parte* divorce decree was passed on 24.02.2005 whereas the application under order 9 Rule 13 CPC was filed on 30.07.2008, as such the same was barred by limitation. It is alleged that the appellant/husband was duly served by the registered post as well as by way of publication, as such he had taken a false stand that he had come to know only on 09.07.2008, when an application was filed in the proceedings under Section 9 of HMA by respondent stating therein that divorce decree has been passed.

4. It is further alleged that earlier petition under Section 9 of HMA bearing no. 572/2002 was dismissed in default on 11.03.2003 which was filed by the appellant/husband, whereas petition for divorce was filed in

May, 2003. Hence, the question of being in touch with the appellant/husband in the said proceedings does not arise. As regards the other civil suit is concerned, it is contended that the respondent was served with the summons of said civil suit on 18.08.2005 for appearance on 15.09.2005 and the divorce decree was passed prior to that as such it cannot be said that the appellant/husband could have been served in those proceedings. The respondent has alleged that all the addresses furnished by her in the divorce petition were correct. The appellant/husband was duly served at Gohana address by registered post. He was also served by way of publication. He intentionally did not appear in the matter.

5. After hearing the counsel for parties, the learned ADJ has dismissed the application under Order 9 Rule 13 CPC holding that the appellant/husband had failed to show that he had no knowledge of *ex parte* decree dated 24.02.2005 prior to 09.07.2008 or that he was not properly served with the divorce petition or his non-appearance was bonafide and unintentional. The learned ADJ has further held that appellant has been deliberately not appearing in the divorce proceedings and in order to harass the respondent/wife the application under Order 9 Rule 13 was filed and, accordingly, dismissed the same with costs of Rs. 5000/-.

6. The learned counsel for appellant has contended that the appellant has derived the knowledge of passing of *ex parte* decree of divorce only on 09.07.2008 when an application was moved by the respondent/wife under the proceedings of Section 9 in HMA petition no.474/2007 filed by him against the respondent/wife before the Ld. Additional District Judge,

Delhi. Immediately, thereafter, he took steps for filing the application under Order 9 Rule 13 CPC. The application was filed within a period of 30 days from the date of getting the knowledge of passing of *ex parte* judgment/decreed of divorce against him.

7. It is contended that the appellant/husband was never served with summons of divorce petition. The appellant was residing in Delhi and the other litigations pending against him and respondent/wife were at Delhi. The respondent/decreed holder obtained an order of publication in 'Punjab Kesri' Haryana edition and got the publication in 'Dainik Tribune', Haryana edition as such there was no reason why the publication was got done in Haryana edition. It is contended that by manipulation, the respondent has got *ex parte* divorce decreed whereas the appellant was never served in the case.

8. On the other hand, the stand of the respondent is that the addresses of the appellant, mentioned in the divorce petition were correct. In a suit for partition and permanent injunction, bearing no.166/2003 filed by appellant against the respondent, the appellant himself has given address as 1/18 Govind Puri, Kalkaji, New Delhi. The respondent was duly served with the summons by registered post for 02.01.2004. Again he was served by publication in 'Dainik Tribune', which is widely circulated in the area, for 29.03.2004 and he had deliberately filed the application with undue delay in order to harass the respondent and learned Addl. District Judge has rightly dismissed the application being barred by limitation.

9. The question for consideration is whether the appellant/husband had the knowledge of divorce proceedings filed by respondent against him prior to 09.07.2008.

10. According to the appellant, he got the knowledge of passing of *ex parte* divorce decree dated 24.02.2005 only on 09.07.2008 when an application was filed by wife in the proceedings initiated by respondent under Section 9 of HMA i.e. HMA petition no.474/2007 which was pending before Ld. ADJ, Delhi.

11. The stand of the respondent/wife is that there is no question of deriving knowledge on 09.07.2008 as is alleged as the appellant/husband was served with summons of the divorce petition by Regd. post at Gohana address for 02.01.2004 as well as by way of publication in 'Dainik Tribune' for 29.03.2004 and had intentionally not appeared.

12. The petition for divorce was filed on 19.5.2003. In the said divorce petition, there are three addresses of the appellant/husband which are as under:-

- (i) Sh.Krishan Lal
S/o late Sh.Ram Asre
C/o Gourav Embroidery
3738/4, Dharampura,
Gandhi Nagar, Delhi.
- (ii) G.K.Enterprises
B-508, Basai Darapur
Moti Nagar, Delhi.
- (iii) C/o Sunita Embroidery

1/18, Govindpuri
Kalkaji, New Delhi.

13. Perusal of record shows that notice of the divorce petition was issued to appellant on 19th May, 2003 for 3rd September, 2003 on filing of PF and RC. On 3rd September, 2003, the appellant was not served at all the three addresses. Thereafter, the learned trial court ordered for service on respondent for 10th November, 2003. Again on 10th November, 2003, appellant was not served and fresh notice was issued to him on filing of PF and RC, returnable on 2nd January, 2004.

14. Prior to date fixed i.e., 02.1.2004, respondent had moved an application under Order 5 Rule 20 CPC for serving appellant through substituted service. The said application was taken up on 18.11.2003. Respondent/wife had brought to the notice of the learned trial court that appellant/husband had filed a complaint with SHO Gohana against her and the new address of appellant was available. Accordingly, the learned trial court ordered for issuance of summons of divorce petition at Gohana address of the appellant and application under Order 5 Rule 20 CPC was kept pending. Accordingly, fresh summons were sent to appellant at Gohana address for 2nd January, 2004.

15. The summons sent at Gohana address was properly addressed, prepaid and duly sent by regd. A.D post. The AD card was received back which did not bear signature of anyone. It is not the case of appellant that Gohana address is incorrect. The Ld. trial court had thereafter taken up application under Order 5 Rule 20 CPC and appellant was ordered to be served by way of publication in 'Punjab Kesri' Haryana Edition. It

was also specifically ordered that in the publication, all the addresses of the appellant be mentioned. By the order of court dated 16.02.2004, due to shortage in deposit of publication charges, the publication was ordered in 'Dainik Tribune', Hindi edition. The change in publication was with the order of the court. In these circumstances, publication cannot be invalidated, as is alleged.

16. Appellant was served by way of publication in 'Dainik Tribune' Haryana Edition on 20.2.2004 for 29th March, 2004 wherein all the four addresses of appellant were mentioned including Gohana address. However as the learned trial Judge was on leave on that day, the case was adjourned to 2nd April, 2004. Despite being served, appellant did not appear either on 29th March or on 2nd April, 2004. Accordingly, on 2nd April, 2004, appellant was proceeded *ex parte*. By way of publication, he was served at all the three addresses mentioned in the divorce petition as well as at Gohana address furnished by respondent on the directions of the court. The service by way of publication is a valid service.

17. Perusal of the record also shows that the criminal complaint filed by appellant against the respondent was dismissed on 12.8.2009 and in the said complaint address of the appellant was recorded as 'Krishan Lal s/o Ram Asre R/o Mughalpur, Gohana, District Sonapat' which is the same address given by respondent for service of appellant in HMA 402/2003 i.e., divorce petition. On the said address, summons by registered post were sent as well as service by way of publication was also affected.

18. In the other litigation between the parties i.e. suit no.166/03 titled as Krishan Lal Vs. Manju, the address of appellant has been mentioned as 1/18, Govind Puri, Kalkaji, New Delhi. In the divorce petition, same address was given. Even in the reports on the processes issued to appellant at the Kalkaji address reflects that appellant was evading service. It is not the stand of appellant that Govind puri, Kalkaji, New Delhi address as well as Gohana address are incorrect. The summons sent by registered post have been sent to him at his correct address. The appellant has also been duly served in this case by way of publication in 'Dainik Tribune' a local newspaper also as well as by way of Regd. Post at Gohana address. He has deliberately chosen not to appear in the court.

19. Under these circumstances, the stand of the appellant that he was not aware of the passing of the *ex parte* decree against him, is an afterthought and is not believable and the learned ADJ has rightly dismissed the application as being barred by time which was filed after a gap of more than three years of passing of *ex parte* divorce decree against him.

20. The learned counsel for the respondent has also pointed that the appellant had no intention to live with the respondent and he had been harassing her by filing cases against her. Thrice, he had filed petition under Section 9 of the Act for restitution of conjugal rights. The first petition was filed on 29.07.1993 being HMA petition no. 292/1993 which remained pending for 8 years and thereafter the same was dismissed as withdrawn on 11.10.2001. The appellant had also moved an application under Section 24 of the Act in the said petition which was dismissed by

the learned ADJ, Delhi on 13.07.1995. Thereafter, the appellant again filed a petition under Section 9 of the Act being HMA petition 597/2002 which was dismissed in default on 11.03.2003. The third petition under Section 9 of the Act being HMA petition no.474/2007 was filed wherein the respondent wife had filed an application that divorce had already been granted. The said petition was dismissed by the learned ADJ, Delhi on 21.08.2008. The learned counsel has further submitted that the appellant had also filed a complaint case against the respondent and her brother under Section 323/506/34 IPC on 28.11.2000. The appellant had also filed a civil suit for partition against the respondent/wife before the learned Civil Judge, Delhi which was dismissed on 28.11.2006.

21. The counsel for appellant has submitted that respondent had earlier filed a divorce petition, however, the said fact was concealed by the respondent/wife before the Id. trial court. On the other hand, the learned counsel for respondent has submitted that the said fact was specifically mentioned in divorce petition being HMA 402/2003 and the learned counsel has referred to para 17 of the petition. There is no concealment as is alleged.

22. No illegality or infirmity is seen in the order of the trial court which calls for interference of this court. Appeal has no merit and same is dismissed.

VEENA BIRBAL, J

MARCH 30, 2012

ssb/srb