

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No. 3582 of 2015 (O&M)

Date of decision : 25.5.2015

Barjesh

... Petitioner

VS

Shaveta

... Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Sandeep Goyal, Advocate, for the petitioner.

Rajesh Bindal, J.

Challenge in the present petition is to the order dated 16.5.2015 passed by the learned court below whereby the application filed by the respondent-wife under Order IX Rule 13 CPC for setting aside of ex-parte judgment and decree dated 22.1.2014, was allowed.

Learned counsel for the petitioner submitted that marriage of the parties was solemnised on 22.2.2011 and one male child was born out of the wedlock. They are living separate since 3.12.2012. The petitioner filed divorce petition against the respondent in which she was proceeded against ex-parte and consequently ex-parte decree was passed on 22.1.2014, for setting aside of which application was filed by the respondent-wife under Order IX Rule 13 CPC, which was allowed by the learned Court below vide impugned order.

Learned counsel for the petitioner submitted that despite efforts the respondent was not served at the address available with the petitioner. Thereafter, the petitioner came to know that the respondent was residing in village Bhuna with some relative. Summon was sent even at that address, which the respondent refused to receive. The same was pasted on the wall. Even *munadi* was also got effected. In fact, the respondent had the knowledge about the proceeding pending against her but deliberately did

not put in appearance. Filing of application immediately after the decree of divorce was passed is sufficient to prove this fact. Hence, the order passed by the learned court below setting aside the ex-parte decree deserves to be set aside.

After hearing learned counsel for the petitioner, I do not find any reason to interfere with the impugned order.

The case set up by the respondent-wife was that she had all along been living at Tohana, which was the address mentioned on various documents produced on record. In fact, she never stayed in village Bhuna, at which address the summon was sent and is shown to have been pasted. Even *munadi* was allegedly conducted at that place. Even in the criminal revision filed under Section 397 Cr. P.C. by the husband, address of the respondent was mentioned of Tohana. In fact, the wrong address was given just to ensure that the respondent is proceeded against ex-parte. The process servers, when appeared in court, failed to even tell the house number, where they pasted the summon. They did not even recognise the respondent.

With the aforesaid material on record, the service of the respondent could not be proved to the satisfaction of the court. There is no error in the order passed by the learned court below in allowing the application filed by the respondent wife for setting aside of ex-parte decree of divorce, especially when the same was filed without any delay. Further generally the efforts should be made to decide the family disputes, especially the matrimonial disputes, on merits instead of technicalities.

The petition is dismissed.

25.5.2015
vs

(Rajesh Bindal)
Judge