

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

CR No. 3481 of 2013 (O&M)
Date of decision: March 23, 2015

Smt. Seema

...Petitioner

Versus

Joginder

...Respondent

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest?**

Present: Mr. Abhishek Yadav, Advocate,
for the petitioner.

Mr. Atul Yadav, Advocate,
for the respondent.

K. KANNAN, J. (Oral)

1. On wife's petition for rejection of the petition for divorce filed by the husband, the court did not pass any order. The objection by the wife was that on the same ground of divorce of alleged cruelty by the wife, three petitions had been filed one after another by the husband and he had allowed the first and the third petitions to be dismissed for default and the second petition was considered by the court as not competent, particularly, in view of the fact that his own earlier petition, namely the first petition was dismissed for default and he had not taken step to restore the petition.

2. At the previous hearing on 19.3.2015, I directed the counsel appearing for the respondent to make his submissions regarding maintainability of the petition under the Hindu Marriage Act (for short '**the Act**'). The counsel says that there had been no disposal of the case on

merits, the respondents contention of cruelty has not been examined at any time.

3. Sections 19 and 20 of the Act deal with the manner of presentation of the petition and the details that a petition must contain. Section 21 declares that subject to the other provisions contained in the Act and to such rules that High Court may make in this behalf, all the proceedings shall be regulated as far as possible, by the Code of Civil Procedure. Order 9 Rule 9 and Order 9 Rule 13 of CPC have been at all times applied to the proceedings before the matrimonial court. The Order 9 Rule 9 CPC enacts an important procedure that if a suit is dismissed for default, it will bar a fresh suit on the same cause of action and the procedure shall be to make an application to restore the dismissal of the petition, if he satisfies the court that there was sufficient cause for his non-appearance on the date when the suit was pending. This provision is akin to Section 11 of the CPC which bars a person from filing the suit on the same cause of action, if it is disposed of on merits. While res-judicata is the principle applicable to cases decided on merits, the bar under Order 9 Rule 9 CPC operates when the person does not secure a decision on merits, but he chooses to remain absent and allows the suit to be dismissed for default. The only remedy of a person whose action is dismissed for non-prosecution shall be to file restoration of his petition and cannot vex the court with a fresh petition. The petitioner has allowed himself the benefit of three petitions coming one after another without learning the lesson of how the only remedy that he had, he had let go the opportunity for restoration. The petition cannot be prosecuted.

4. In exercise of power under Article 227 of the Constitution of

India, I quash the institution of the petition filed by the husband and order the same to be removed as not maintainable.

5. Civil revision is allowed, but on different grounds that go as far as to dismiss the petition filed by the husband summarily.

March 23, 2015
prem

(K.KANNAN)
JUDGE