

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

**Civil Revision No. 5725 of 2013 (O&M)**

Date of decision : 21.4.2015

Thomas

... Petitioner

VS

Dimple

... Respondent

**Coram: Hon'ble Mr. Justice Rajesh Bindal**

Present: Mr. Jaswinder Singh Grewal, Advocate, for the petitioner.

Mr. N. S. Dandiwal, Advocate, for the respondent.

**Rajesh Bindal, J.**

Husband is before this Court impugning the order dated 16.8.2013 passed by the learned Court below whereby the application dated 19/6.2.2013 filed by the respondent wife under Order IX Rule 13 CPC for setting aside the order dated 29.8.2012 proceeding her ex-parte and consequently the judgment and decree dated 2.1.2013, was allowed.

Learned counsel for the petitioner-husband submitted that a divorce petition under Section 10 of the Indian Divorce Act, 1869 was filed by the petitioner husband on 12.6.2012 in which notice was issued to the respondent wife. Efforts were made to serve her. As per the reports of the process server dated 26.6.2012 and 10.8.2012, she refused to accept the notice. Vide order dated 29.8.2012, when the respondent wife did not put in appearance in Court, she was proceeded against ex-parte. Thereafter ex-parte decree for divorce was passed on 2.1.2013. Immediately thereafter the respondent filed an application under Order IX Rule 13 CPC for setting aside the order dated 29.8.2012 proceeding her ex-parte and the ex-parte divorce decree, which was allowed by the learned Court below without there being any justifiable reason.

Learned counsel for the petitioner submitted that besides the report of refusal to receive the summons, the fact that the respondent was in the knowledge of the proceedings of divorce pending against her is evident

from the application dated 14.9.2012 filed by her at Ferozeur under Section 125 Cr.P.C. on behalf of the minor daughter as a natural guardian. In para 8 thereof it was specifically mentioned that divorce petition has been filed by the petitioner against the respondent. Besides this, during proceedings before the Women Cell in the police department, it had come on record that divorce petition has been filed by the petitioner which was fixed for hearing on 29.8.2012. It is so mentioned in the enquiry report dated 13.8.2012. Once the fact of filing of divorce petition was well within the knowledge of the respondent wife, there was no good reason for her non-appearance in Court. The order directing ex-parte proceedings against her did not deserve to be set aside.

On the other hand, learned counsel for the respondent wife submitted that she is working as a teacher in a school located about 40-50 kilometers from Ferozepur. The dates on which the effort for service was allegedly made by the process server and a report of refusal was made, were working days when the respondent was present in school, hence, could not be present at home. The report of refusal was false. Explaining the admission made in the application filed by the respondent under Section 125 Cr. P.C., learned counsel for the respondent wife submitted that the respondent was waiting for summons from the Court and as she did not receive any notice from the Court, she could not put in appearance. Even after the report of alleged refusal, the learned Court below did not adopt any other mode of service of the respondent. Even during the proceedings before the Women Cell, copy of the divorce petition was not handed over to her. The respondent, who had already filed the petition for restitution of conjugal rights and having a minor daughter, is still ready and willing to join the company of the petitioner. The orders directing ex-parte proceeding and the ex-parte decree of divorce were rightly set aside by the learned Court below in the interest of justice.

Heard learned counsel for the parties and perused the paper book.

In the case in hand, the wife with a minor daughter is on the one side, whereas the husband is on the other side. In a divorce petition filed by the husband, the respondent wife was directed to be proceeded against ex-parte on 29.8.2012 as the report of the process server was that she

refused to accept the notice. This fact has been disputed by the respondent. Soon after ex-parte decree of divorce was passed against the respondent-wife on 2.1.2013, she filed the application for setting aside the ex-parte proceedings. The application has been allowed by the learned Court below.

Vide the impugned order, the learned Court below considering the totality of the facts and circumstances of the case, set aside the ex-parte proceedings and the decree of divorce and restored the divorce petition to its original number to be tried on merits.

Considering the fact that the case in hand is a matrimonial dispute, the application for setting aside of ex-parte proceedings was filed immediately without any delay and the respondent having an infant child born out of the wedlock, in my opinion, the learned Court below has not committed any error in setting aside the ex-parte order and decree of divorce and permitting the parties to proceed with the case on merits keeping in view the interest of justice. No case for interference is made out.

The petition is dismissed.

21.4.2015  
vs

(Rajesh Bindal)  
Judge