

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

CR No.7303 of 2015 (O&M).

Date of Decision: 19.11.2015.

Harpreet Singh

....Petitioner.

VERSUS

Harpreet Kaur and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Gurmeet Singh, Advocate for the petitioner.

SNEH PRASHAR, J.

CM-23366-CII-2015

Allowed, as prayed for.

CR-7303-2015

This is a petition under Article 227 of Constitution of India for setting aside the order dated 05.08.2015 passed by learned Additional District Judge, Tarn Taran, vide which the application of the petitioner filed under Order XII Rule 6 of the Code of Civil Procedure (for short, “the Code”) in a petition under Section 11/12/13 of the Hindu Marriage Act, 1955 (for short, “the Act of 1955”) was dismissed.

The relevant facts are as under:-

A petition under Section 11, 12 and 13 of the Act of 1955 has

been filed by petitioner Harpreet Singh for annulment of his marriage with respondent No.1 Harpreet Kaur on the ground that Harpreet Kaur was already married to respondent No.3-Amandeep Singh before her marriage with him and she had concealed the factum of her first marriage from him and further that without taking divorce from her first husband she had induced him to marry her. Another ground on which he seeks divorce is of cruelty on account of adulterous relations of Harpreet Kaur with Talwinder Singh (respondent No.2).

After respondent No.1-Harpreet Kaur appeared and filed a joint written statement with respondent No.2, the petitioner filed an application invoking the provisions of Order XII Rule 6 of the Code and praying for passing a decree of annulment of marriage in his favour in view of the admissions made by the said respondents.

Finding no merit in the application, it was dismissed by learned Additional District Judge, Tarn Taran vide the impugned order dated 05.08.2015.

Feeling aggrieved by the said order, the petitioner has filed the instant petition.

The submissions made by learned counsel representing the petitioner have been considered.

Learned counsel for the petitioner argued that in the written statement filed by Harpreet Kaur (respondent No.1) she admitted that prior to her marriage with the petitioner she was married to Amandeep Singh (respondent No.3). She relied upon some agreement dated 09.07.2011

which she alleged was signed by her and the petitioner in the presence of witnesses wherein the factum of her first marriage was mentioned, but that agreement is an outcome of fraud and impersonation. No decree of divorce passed by a competent Court of jurisdiction could be produced by her to prove dissolution of her marriage with Amandeep Singh. In the reply filed by Amandeep Singh, he alleged that his marriage with Harpreet Kaur has been dissolved in the presence of the Panchayat by customary mode, but he could refer to no such custom. Learned counsel asserted with vehemence that when from the pleadings of the respondents, it is proved that Harpreet Kaur had married petitioner without getting her first marriage dissolved and had also concealed the factum of her first marriage from the petitioner, a decree for divorce annulling the marriage of the petitioner with Harpreet Kaur should have been passed forthwith by learned trial Court.

There appears no merit in the arguments of learned counsel for the petitioner. Harpreet Kaur may have admitted the factum of her first marriage in her pleadings but at the same time, as is apparent from the impugned order, she also categorically pleaded and it has also been submitted by Amandeep Singh in his reply that the marriage was dissolved in the presence of the Panchayat as per custom. A photocopy of the writing of divorce before the Panchayat dated 01.07.2013 has been produced by Harpreet Kaur.

As regards knowledge of the petitioner regarding first marriage of Harpreet Kaur, she has referred to an agreement dated 09.07.2011 signed by her and the petitioner which prima facie shows that the petitioner had

knowledge regarding her first marriage. The petitioner alleges the agreement to be result of fraud and impersonation. In said set of rival contentions, while it will be incumbent upon Harpreet Kaur to prove due execution of the agreement, it will be for the petitioner to show that the agreement was an outcome of fraud. It will also be a matter in issue whether there is a custom prevailing among the parties regarding dissolution of marriage/taking divorce in the presence of Panchayat. At this initial stage of the petition, nothing can be assumed or concluded in favour of either of the parties.

Learned trial Court had rightly observed that the allegations and counter allegations made by the petitioner and Harpreet Kaur in their respective pleadings require to be proved by adducing evidence and at this initial stage no decree can be passed declaring the marriage of the petitioner with Harpreet Kaur a nullity.

Thus, finding no ground for intervention in the order dated 05.08.2015 of learned Additional District Judge, Tarn Taran, the petition is dismissed.

(SNEH PRASHAR)
JUDGE

19.11.2015.
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