

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

FAO No.M-191 of 2006

Date of Order: 06.10.2015

Smt. Savita

..Appellant

Versus

Davinder Singh

..Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MS. JUSTICE REKHA MITTAL**

**Present: Mr. Maharaj Kumar, Advocate,
for the appellant.**

**Mr. Sagar Aggarwal, Advocate,
for the respondent.**

RAJIVE BHALLA, J (Oral)

The appellant, challenges, the ex-parte judgment and decree of divorce, dated 11.02.2006, passed by the Additional District Judge, Sonapat.

Counsel for the appellant submits that the appellant was not aware of the pendency of the petition for divorce as summons were never served. The publication in "Chardi Kalan", on 14.06.2005, did not come to her notice. Counsel for the appellant further submits that the appellant filed an application for setting aside ex-parte order, dated 12.09.2005, but it was withdrawn as the appellant was threatened that if she did not withdraw the application, she and her children would be killed. The appellant, therefore, made a statement on 08.02.2006, under threat that she does not wish to

press her application for setting aside of ex-parte order dated 12.09.2005. This apart, it is contended by counsel for the appellant that the pleadings and the evidence do not make out a case for grant of divorce on the ground of cruelty.

Counsel for the respondent, on the other hand, submits that the appellant was aware of the filing of the petition but evaded service. The trial court, therefore, ordered service by publication. After publication of a notice in a newspaper but as the appellant did not put in appearance, she was ordered to be proceeded against ex-parte. The appellant, thereafter, filed an application for setting aside the ex-parte order, but withdrew the application and then filed this appeal, thereby proving that the appellant has filed this appeal, merely to pressurize the respondent.

We have heard counsel for the parties, appraised the facts and perused the impugned judgment and decree.

The parties were married on 11.03.2004 and were blessed with three children. The respondent-husband, filed a petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the 1955 Act'), for divorce alleging cruelty, namely, quarrels, insults in the presence of neighbours, failure to serve food to the children, leaving the matrimonial house without permission, taking away jewellery, withdrawing Rs.7000/- from the joint account and eventually refusing to accompany the respondent to his house.

Notice of the petition was issued. A perusal of the trial court record reveals that as the appellant-wife could not be served by ordinary process, she was ordered to be served through publication

in a newspaper. After publication in a newspaper also, as she did not put in appearance, the appellant was ordered to be proceeded against ex-parte, vide order dated 12.09.2005. The appellant filed an application on 29.10.2005, for setting aside the ex-parte order, dated 12.09.2005, but eventually on 08.02.2006, withdrew the application, by making a statement that she does not wish to press her application for setting aside an ex-parte order, dated 12.09.2005.

The respondent-husband, thereafter, examined four witnesses in all, namely, PW1 Subash, PW2 Om Parkash, PW3 Maha Chand and the respondent himself as PW4. The learned court below after appraising the unrebutted pleadings and evidence, allowed the petition and dissolved the marriage by grant of a decree of divorce on the ground of cruelty. The appellant has filed this appeal for setting aside the ex-parte judgment and decree.

The contentions by counsel for the appellant that the appellant withdrew her application for setting aside ex-parte order dated 12.09.21005, as she was threatened that she and her children would be killed, if she pressed her application, remain unsubstantiated by reference to any material that may be considered sufficient to support much less record such a finding. The appellant having herself withdrawn her application against the order directing ex-parte proceedings against her, is not entitled to raise a grievance against the ex-parte proceedings.

A perusal of the unrebutted pleadings and evidence on record, namely, unrebutted ex-parte depositions by PW1 Subash, PW2 Om Parkash, PW3 Maha Chand, in our considered opinion, are

sufficient to raise an inference that the appellant treated the respondent with a degree of cruelty, sufficient to dissolve the marriage. The unrebutted depositions by the respondent and his witnesses reveal that the appellant used abusive language and did not look after the children, threatened to commit suicide and left the matrimonial home, with jewellery etc. and despite numerous attempts by the respondent to restore matrimony, rebuffed all such efforts, without any reasonable cause.

Consequently, finding no merit, the appeal is dismissed, with liberty, however, to the appellant to approach the appropriate forum for grant of permanent alimony, in accordance with law.

(RAJIVE BHALLA)
JUDGE

October 06, 2015
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(REKHA MITTAL)
JUDGE