

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

FAO No.5940 of 2012 (O&M)

Date of decision: 17.07.2015

Jasminum Kaur

..... Appellant

versus

Amardeep Singh

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Sumeet Mahajan, Senior Advocate with
Mr.Amit Kohar, Advocate for the appellant
Mr.M.S.Sachdev, Advocate for the respondent

1. *Whether Reporters of Local Newspapers 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?*

Kuldip Singh, J.

This judgment shall dispose of FAO No.5940 of 2012. Jasminum Kaur has filed this appeal against order dated 6.10.2012, passed by the learned District Judge, Jalandhar, vide which, her application under Order 9 Rule 13 CPC, for setting aside the ex-parte judgment and decree dated 16.11.2009, passed by the then District Judge, Jalandhar under Section 13 of the Hindu Marriage Act, 1955 in HMA Case No.25 of 2009 was dismissed.

The brief facts of the case are that Amardeep Singh, husband of the appellant filed a petition under Section 13 of the Hindu Marriage Act, 1955 before the learned District Judge, Jalandhar on 31.1.2009. In the petition, it was stated that he solemnised the marriage with the respondent (present appellant) on

28.9.2003 according to sikh rites and ceremonies at Ludhiana. The parties cohabited as husband and wife at Jalandhar. From the wedlock, a daughter, namely, Reet Kaur was born on 24.6.2004, who is now living with her mother. Thereafter, certain allegations of cruelty were levelled and it was prayed that divorce may be granted on the ground of desertion and cruelty.

Notice was issued to the respondent (present appellant) through ordinary process as well as registered letter. The summons were not received back but the registered letter was received back with the report of refusal. Hence, she was proceeded ex-parte. After recording ex-parte evidence, divorce decree was granted on 16.11.2009.

Appellant in her application claimed that she was not served with the notice of the divorce petition. The divorce petition was filed by concealing facts, on the basis of false allegation against her. The appellant is ready to live with her husband. Decree is result of outcome of fraud and misrepresentation. She stated that one Maninder Singh Chatwal resident of Ludhiana, who is acquainted with her father apprised her father on 17.8.2010 regarding the fact that the Amardeep Singh respondent is searching for a match for the marriage at Ludhiana in his relations. On coming to know about the said fact the appellant contacted Gurvinder Arora, Advocate on 18.8.2010 and came to know about the passing of the ex-parte decree against her and thereafter, she filed the present application.

Respondent husband opposed the application on the ground that his wife was duly served and ex-parte proceedings were

correctly initiated. It was further stated that previously parties had filed a petition for divorce by mutual consent under Section 13-B of the Hindu Marriage Act, 1955 before the learned District Judge, Jalandhar on 8.1.2008. Statements of the parties were recorded. At the stage of second motion, on 13.8.2009, wife did not turn up and the divorce petition was dismissed. Thereafter, he had filed a regular divorce petition under Section 13 of the Hindu Marriage Act, 1955 at Jalandhar. It was further stated that Jasminum Kaur had also filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 before the Ilqa Magistrate, Ludhiana which was ultimately dismissed for non-prosecution. Respondent further stated that he has already re-married on 24.8.2010 after the passing of the divorce decree and that the application is time barred. From the pleadings, following issues were framed:-

- 1. Whether there is good cause for setting aside the exparte judgment and decree dated 16.11.2009? OPA*
- 2. Whether the application is within time? OPA*
- 3. Relief.*

Issue Nos.1 and 2 were taken up together and decided against the applicant. Consequently, the application was dismissed.

I have heard learned counsel for the parties and have carefully gone through the file.

The perusal of file shows that when the petition was filed, the learned District Judge ordered the issuance of summons by way of ordinary process as well as through registered post. It was noticed in the next order dated 17.3.2009 that the ordinary summons have

not been received back, whereas summons through the registered post have been received back with the report of refusal by the postal employee. Therefore, under Order 5 Rule 9 CPC, a declaration was made that respondent is deemed to have been duly served. Therefore, she was proceeded against ex-parte. The perusal of the registered letter further shows that as per endorsement of the postal employee, the postman had visited the address of the respondent (appellant herein) on 5.2.007, 6.2.008 and ultimately on 9.2.2008, he made the report of refusal. In this way, the postal employee made three attempts to effect the service of registered letter on the respondent (appellant herein).

Admittedly, the present appellant is resident of Ludhiana. She has not denied in her evidence that address mentioned in the registered letter is correct. Before the lower Court the appellant had herself appeared and reiterated the assertion that she was not aware about the proceedings. She denied knowledge of the divorce petition.

Learned District Judge recorded that postman in this case was material witness but was not examined by the present appellant to show that no service was effected.

On the other hand, respondent husband examined one Mandeep Kaur as RW3 and also examined Harvinder Singh Chaudhary as RW2 and Haardeep Singh Rajpal as RW4.

Learned counsel for the appellant has argued that since the present appellant was residing outside the jurisdiction of Jalandhar Court, therefore, personal service should have been

effected and the service through registered letter cannot be called valid service.

Order 5 Rule 9 of CPC provides for delivery of summons, which is reproduced as under:-

9. Delivery of summons by Court—

(1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent to the proper officer to be served by him or one of his subordinates or to such courier services as are approved by the Court.

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him in such manner as the Court may direct.

(3) The services of summons may be made by delivering or transmitting a copy thereof by registered post acknowledgement due, addressed to the defendant or his agent empowered to accept the service or by speed post or by such courier services as are approved by the High Court or by the Court referred to in sub-rule (1) or by any other means of transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court:-

Provided that the service of summons under this sub-rule shall be made at the expenses of the plaintiff.

(4) Notwithstanding anything contained in sub-rule (1), where a defendant resides outside the jurisdiction of the Court in which the suit is instituted, and the Court directs that the service of summons on that defendant may be made by such mode of service of summons as is referred to in sub-rule (3) except by registered post acknowledgement due), the provisions of rule 21 shall not apply.

(5) When an acknowledgement or any other receipt purporting to be signed by the defendant or his agent is received by the Court or postal article containing the summons is received back by the Court with an endorsement endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that defendant or his agent had refused to take delivery of the postal article containing the summons or had refused to accept the summons by any other means specified in sub-rule (3) when tendered or transmitted to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant:

Provided that where the summons was properly addressed, pre-paid and duly sent by registered post

acknowledgement due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgement having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of issue of summons.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of courier agencies for the purposes of sub-rule(1).

It goes to show that the Court is not debarred from ordering service through registered post simultaneously with the service through its processing agency. Sub-rule 1 clearly lays down the mode of service unless otherwise directed. Sub-rule 3 permits the service through registered post. Learned counsel has heavily relied upon Sub-rule 4 of Rule 9 to state that Rule 21 will apply in the present case. However, I am of the view that Rule 21 is applicable except in case of service by registered post with acknowledgement due. Rule 5 clearly lays down that when the report is made by the postal employee that defendant refused to take delivery of the postal articles or had refused to accept summons, the Court issuing the summons shall declare that the summons have been duly served on the defendant.

In the present case, the postal employee made two efforts before making report of the refusal, showing that an honest effort was made by the postal employee to effect service through registered post. Even if, the defendant was residing outside the

jurisdiction, service through registered letter is a valid service. Therefore, there is no illegality in the order of the lower Court ordering ex-parte proceedings against her. The ex-parte proceedings were ordered on 17.3.2009. The divorce decree was granted on 16.11.2009. The present application was filed on 19.8.2010. Once there is a valid service, the limitation has to be counted from the said date and the story of the appellant, that one Maninder Singh Chatwal of Ludhiana, who is acquainted with her father had informed her father on 17.8.2010 that Amardeep Singh husband respondent is looking for a girl for marriage purpose at Ludhiana prompted her to contact her counsel from where she came to know about ex-parte divorce decree, cannot be accepted. It is also not denying fact that earlier parties had filed a petition under Section 13-B of the Hindu Marriage Act, 1955 in district Court at Ludhiana, wherein at the second motion, the present appellant did not appear and the same was dismissed in default. She had also filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 before the Ilqa Magistrate Ludhiana which was also dismissed for want of prosecution.

Learned counsel for the appellant has vehemently argued that the husband had admitted in cross-examination that conciliation proceedings took place before the Mediation Centre wherein husband did not disclose about the decree of divorce to the wife. The mere fact that the husband remained mum, does not mean that he committed a fraud. The present position is that after his re-marriage, the respondent-husband has two children from the second marriage.

The authority of Hon'ble Supreme Court in the case of Indu Bhushan v. Munna Lal and another, (2007) 14 Supreme Court Cases 42 and the authority of this Court in the case of Dalbir Singh v. Bachan Singh, 2010(4) PLR 525, do not help the present appellant in the present appellant. In Dalbir Singh's case (supra), the service was effected through publication in newspaper which is not in the present case. The facts of the case of Indu Bhushan's case (supra), are also different from the facts of the present case.

It being so, I do not find any merit in the present appeal. The same is accordingly dismissed.

Before parting with the judgment, it comes out that an application under Section 24 of the Hindu Marriage Act, 1955 was also filed before this Court. Since there is a dispute between the parties that some payments were made when petition under Section 13B of the Hindu Marriage Act, 1955 was filed, the said application is disposed of with liberty to the present appellant to approach the Court of District Judge for grant of permanent alimony or she can approach the Court of Magistrate for grant of maintenance.

17.07.2015
gk

(Kuldip Singh)
Judge