

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

FAO No.914 of 2014 (O&M)

Date of decision: 14.07.2015

Manjit Kaur

..... Appellant

versus

Parminder Singh

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.B.S.Sra, Advocate for the appellant
Mr.Vivek Rattan, 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. (Oral)

Impugned in the present appeal is the order dated 16.12.2013, passed by the learned Additional District Judge, SAS Nagar, Mohali, whereby the application filed by the appellant under Order 9 Rule 13 of the Code of Civil Procedure for setting aside the ex-parte decree of divorce dated 11.12.2009 was dismissed.

Suffice it to say that the parties were married on 26.11.2003 in accordance with sikh rites and ceremonies at Patiala. Out of the marriage, one daughter, namely, Harpreet Kaur was born on 1.3.2005.

It comes out that on 24.7.2007, Parminder Singh filed a divorce petition against his wife in Mohali Court under Sections 13

(1)(ia)(ib) of the Hindu Marriage Act, 1955 for dissolution of marriage.

The wife was not served despite repeated attempts and ultimately, after publication, exparte proceedings were initiated and divorce decree was granted on 11.12.2009. Application filed for setting aside the said divorce decree was dismissed vide impugned order.

I have heard learned counsel for the parties and have also carefully gone through the record as well as file.

The plea of the learned counsel for the appellant is that the appellant was not properly served. It is stated that in address though house No. was correctly mentioned but in place of street No. 3B, street No.11 was mentioned, due to which service could not be effected on the wife.

I have gone through the original file in which the divorce proceedings were conducted. I have also gone through the file pertaining to application under Order 9 Rule 13 CPC. The perusal of original file shows that in the divorce petition, the address of the respondent was mentioned as "House No.9, Street No.11, Block-C, Deep Nagar, Tripuri, Patiala". The perusal of the interim order shows that summons issued on the said address were received back unexecuted and ultimately, the Court ordered that the respondent be served through publication in 'Des Sewak'. As the publication charges were not deposited, the publication could not be issued. Ultimately, on 20.5.2008, none appeared for the petitioner-husband and the petition was dismissed in default. An application for restoration of the petition was filed on 7.6.2008 and notice of the same was also issued to the wife. In the order dated 3.3.2009, it was

reported that the address of the respondent is incorrect. Later on, husband filed an application to the effect that he has got no other address of the respondent except the address given in the head note of plaint and also requested for substituted service. Prayer was allowed. Consequently, the respondent was served through publication of notice in daily 'Chardhi Kala'. After recording exparte evidence, divorce decree was passed.

The perusal of application under Order 9 Rule 13 CPC shows that it was nowhere pleaded in the application that street no. was wrongly mentioned as sought to be made out before this Court. Even in the application, the applicant had given same address and made no mention that street no. is different. Not only this, the present appellant appeared as a witness in the proceedings and gave the same address as given in the original divorce petition. In her affidavit, in examination-in-chief, she has also nowhere mentioned that wrong street no. was given. Even her father also appeared as witness to support her case and mentioned same address and also did not mention that street no. was wrongly mentioned.

In the absence of pleadings and evidence to this effect, the trial Court was justified in holding that an effort was made to effect service on the respondent on the address given in the petition and same address is not disputed.

If being so, there is no error in the order of the trial Court in holding that despite best efforts, personal service of the respondent (appellant herein) could not effected. Therefore,

substituted service in daily news paper 'Chardhi Kala' was effected and exparte proceedings were correctly initiated. It being so, I do not find any illegality or infirmity in the impugned order. The same is accordingly upheld and consequently, the appeal is dismissed.

14.07.2015

gk

**(Kuldip Singh)
Judge**