

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

FAO-M No. 231 of 2014 (O&M)

Date of decision: 12.08.2015.

Kanu Paul Sharma

.....Appellant.

Versus

Bablu Manchanda

.....Respondent.

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MS. JUSTICE NAVITA SINGH**

1. Whether Reporters of local papers 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?

Present: Mr. B.D. Sharma, Advocate, for the appellant.

None for the respondent.

NAVITA SINGH, J.

The respondent did not appear despite service and was proceeded against *ex parte* vide order dated 22.07.2014.

An order regarding payment of interim maintenance to the appellant was passed on 12.02.2015 directing that the respondent to pay an amount of Rs.2,500/- per month to the appellant during the pendency of the appeal from the date of application onwards. He was also required to pay an amount of Rs.15,000/- as litigation expenses. However, despite passing of said order, the respondent did not bother to put appearance.

Counsel for the appellant submits that nothing was paid by the respondent as ordered on 12.02.2015.

Since respondent neither paid the litigation expenses nor paid any part of interim maintenance, his defence is struck off.

Counsel for the appellant has been heard.

This appeal is preferred against the judgment and decree dated 13.02.2014 passed by Additional District Judge, Kapurthala, vide which the petition filed by the present appellant under Section 13 of the Hindu Marriage Act, 1955 (Act for short) was dismissed.

As per the petition, the marriage between the parties was solemnized on 24.05.2011 at Gugga Mandir, Chandigarh. The parties had married against the wishes of their families and had also got protection from this Court vide order dated 26.05.2011. For five days, the couple lived in village Nadala and during those days, the respondent and his father Kewal Krishan demanded money from the appellant. She was asked to bring Rs.10,00,000/- (Ten lac) from her parents for settling the respondent in England. The appellant pleaded that she had been entrapped and lured into marriage by the respondent with ulterior motive. On 01.06.2011, she moved a complaint to the police at Kapurthala against the respondent and his father. The matter was, however, compromised and the appellant agreed that she would not take any action against the accused and they decide to part ways. Agreement of divorce was reduced into writing on 08.07.2011 and according to that, the parties were to live separately and obtain a decree of divorce by mutual consent after the statutory period of separation expired.

In terms of the agreement between the parties, they filed a joint petition for divorce on 13.06.2012, but the respondent failed to put in appearance for statement at first motion. The matter was adjourned, but the

respondent still did not appear and, therefore, the petition was withdrawn by the appellant. The appellant then came to know that the respondent was a drug addict and had been booked in a case under the Narcotic Drugs and Psychotropic Substances Act by the police of Police Station Sultanpur Lodhi.

The respondent admitting the marriage denied that the parties lived as man and wife in village Nadala and that any demand was made by him. He said that he was already living in England for doing Diploma in Business Management while the present appellant was studying in Punjab University, Amritsar. There was no question of making any demand for settling the husband in England. The father of the wife was an active leader of the ruling Akali Party and had influence in the Police Department and, therefore, a false complaint was made against the respondent and his father. The respondent was forced to sign the divorce petition and for that reason he did not appear in Court after the petition was filed.

The petitioner appeared as her own witness as PW1 and examined Shri Niwas as PW2 and Ram Kumar, her father, as PW3. PW4 HC Surjit Singh simply produced the copy of FIR against the husband whereby he was booked under the Narcotic Drugs and Psychotropic Substances Act. No evidence was, however, led by the respondent and he did not bother to step into the witness box even himself and, therefore, the Court proceeded further after closing his evidence.

The Court below came to the conclusion that the wife herself admitted that the husband was already residing in England for more than

two years before the marriage and, therefore, her allegation that a demand of Rs.10,00,000/- (Ten lac) was made for settling the boy in England could not be given any credence. Also, it was held that since it was a run away marriage, there was no question that the respondent could expect any money to be paid by the family of the appellant. The trial Court, therefore, dismissed the petition for divorce.

Since the appellant was more than sure that she did not want to live with the respondent and had sought a decree of divorce which was declined, she came up in appeal and wanted the marriage to be dissolved.

Notice regarding appeal was issued to the respondent, who was served for 22.07.2014, but he did not appear. He was proceeded against *ex parte*. An application for interim maintenance was filed along with the appeal, which was heard *ex parte* and an order regarding payment of interim maintenance and litigation expenses was passed as mentioned above. The respondent, however, failed to pay the arrears of maintenance as also the litigation expenses and, therefore, his defence was struck off as is depicted in the order passed here-in-above.

Counsel for the appellant contended that since the maintenance and litigation expenses were not paid and defence of the husband-respondent is struck off, the appeal is liable to be allowed. He placed reliance on the judgments of Division Bench of this Court in the cases **Raj Rani @ Rani Devi vs. Karam Singh, 2015 (1) HLR 195; Paramjeet vs. Bhim Singh 2014 (136) AIC 744; Gurmeet Kaur vs. Jasbir Singh, 2014 (1) Law Herald 865 and Smt. Priyanka vs. Jai**

Bhagwan, 2014 (1) CivCC 645.

In the said cases, the appeals filed by the wife were allowed on account of non-payment of maintenance pendente lite and a decree of divorce was granted in her favour.

In numerous other cases, similar view was taken by this Court. Those cases are referred in the judgments given above.

In the given facts and circumstances, there appears to be no reason to deviate from the settled view taken in various cases. Non-payment of maintenance and litigation expenses entailing the striking out the defence of the husband would also entail the consequence of the appeal of the wife being allowed granting a decree of divorce in her favour or setting aside the decree of divorce obtained by the husband, as the case may be.

The appeal is, therefore, allowed reversing the judgment and decree passed by the Court below. The petition filed by the appellant under Section 13 of the Act is allowed and the marriage between the parties is dissolved by way of a decree of divorce granted in favour of the appellant.

(RAJIVE BHALLA) (NAVITA SINGH)
JUDGE JUDGE

12.08.2015
Ramesh