

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.M.No.18274-CII of 2015 and
FAO No.M-92 of 2015 (O&M)
Date of Order: 19.09.2015

Daljeet Kaur Sabharwal

..Appellant

Versus

Desinderpreet Singh

..Respondents

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MS. JUSTICE NAVITASINGH

Present: Mr. R.S.Dhiman, Advocate,
for the non-applicant-appellant.

Mr. T.S.Chauhan, Advocate, and
Mr. Satnam Chauhan, Advocate,
for the applicant-respondent.

RAJIVE BHALLA, J (Oral)

C.M.No.18274-CII of 2015

Allowed as prayed for.

Reply to the application, filed under Section 5 of the
Limitation Act, is taken on record.

C.M.No.5343-CII of 2015

Prayer in this application is to condone delay of 903 days
in filing the appeal.

We have heard counsel for the parties and as sufficient
cause has been shown, allow the application and condone the delay
of 903 days in filing the appeal.

FAO-M-92 of 2015

Prayer in this appeal is to set aside, order dated 03.01.2015, passed by the Additional District Judge, Patiala, holding that an application, filed under Order 9 Rule 13 of the Code of Civil Procedure filed for setting aside an ex-parte judgment and decree, passed under the Hindu Marriage Act, 1955 (hereinafter referred to as 'the 1955 Act') is not maintainable.

We have heard counsel for the parties and perused Section 28(1) of the 1955 Act, which reads as follows:-

“28. Appeals from decrees and orders.-

(1) All decrees made by Court in any proceeding under this Act shall, subject to the provisions of sub-section (3), be appealable as decrees of the Court made in the exercise of its original civil jurisdiction and every such appeal shall lie to the Court to which appeals ordinarily lie from the decisions of the Court given in the exercise of its original civil jurisdiction.

A perusal of Section 28(1) of the 1955 Act reveals that it does not support the finding recorded by the trial court, that an application, filed under Order 9 Rule 13 for setting aside an ex-parte judgment and decree, passed under the 1955 Act, is not maintainable. Admittedly, the provisions of the Code of Civil Procedure are applicable to proceedings under the 1955 Act. The mere use of the words “all decrees made by Court in any proceeding under this Act”, shall be appealable, does not exclude the

applicability of Order 9 Rule 13 of the Code of Civil Procedure. Section 28 of the 1955 Act does not by words or by intent prohibit the applicability of Order 9 Rule 13 of the Code of Civil Procedure. A party aggrieved by an ex-parte judgment and decree may either file an application under Order 9 Rule 13 of the Code of Civil Procedure or an appeal. We are, therefore, not inclined to accept the opinion of the High Court at Gauhati, recorded in **Anjan Kumar Kataki v. Smt. Minakshi Sarma, AIR 1985(Guhati) 44.**

At this stage, counsel for the respondent states that he has no objection, if the appeal is allowed, the impugned order is set aside and the matter is restored to the Court of Additional District Judge, Patiala, for adjudication afresh and in accordance with law.

Consequently, the appeal is allowed, order dated 03.01.2015 is set aside and the matter is restored to the Additional District Judge, Patiala, to consider the application, filed under Order 9 Rule 13 of the 1955 Act, afresh and in accordance with law, within three months of parties putting in appearance, on 20.10.2015.

(RAJIVE BHALLA)
JUDGE

September 19, 2015
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(NAVITA SINGH)
JUDGE