

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

RSA No.3142 of 2013 (O&M)

Date of Decision:20.07.2015

Nirmala Devi

.....Appellant

Versus

Ram Jeet Mauria

.....Respondent

CORAM:- HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Rishav Jain, Advocate,
for the appellant.

RITU BAHRI, J.

CM No.8393-C of 2013

For the reasons mentioned in the application, same is allowed
and delay of 56 days in filing the appeal is condoned.

RSA No.3142 of 2013 (O&M)

Plaintiff-appellant has come up in appeal against the judgments
of concurrent findings of facts dated 21.12.2009 and 21.07.2012 passed by
the Civil Judge (Junior Division), Patiala and the Additional District Judge,
Fast Track Court, Patiala, respectively, whereby her suit for recovery of
Rs.32,500/- as amount of maintenance at the rate of Rs.5000/- per month for
the period from 01.09.1997 to 15.04.1998, has been dismissed.

Marriage of Nirmala Devi-plaintiff (appellant) was solemnized
with Ram Jeet Mauria-defendant (respondent) in the year 1972 at village

Sarava, District Azamgarh, U.P., as per Hindu rites and rituals. No child was born out of this wedlock. In the year 1976, defendant-respondent got a job in Punjab State Electricity Board at Patiala. Accordingly, he took the plaintiff at Patiala in 1977, where they cohabited as husband and wife. Thereafter, their relations became strained as she (plaintiff) could not give birth to a child. On 21.08.1997, plaintiff-appellant was thrown out of the house after giving beatings. Thereafter, she went to her parental village Sarava. However, with the intervention of respectable persons, she was taken back by the defendant-respondent to his village on 23.08.1997. She was again beaten up mercilessly and turned out of the house on 01.09.1997. This time, the attempt to reconcile the parties also failed. Thereafter, defendant-respondent started living with one Rita Rani. The defendant was working in Punjab State Electricity Board and was earning Rs.7000/- per month. He also owned 3 acres of agricultural land at village Rakba, Tehsil Jalalpur, District Ambedkar Nagar, U.P. Apart from this, he also owned a residential plot measuring 200 Sq. yards. Hence, the plaintiff-appellant claimed maintenance at the rate of Rs.5000/- per month w.e.f. 01.09.1997 to April, 1998.

Upon notice respondent-defendant filed written statement and controverted the allegations levelled by the plaintiff-appellant in the suit. It was stated that after getting divorce from the defendant, the plaintiff had been remarried.

From the pleadings of the parties following issues were framed:-

1. Whether the plaintiff is entitled to recover Rs.32,500/- as arrears of maintenance @ Rs.5000/- per month for the period

from 01.09.1997 to 15.04.1998 and for future period from 15.04.1998 at the same rate? OPP

2. Whether the suit is not maintainable in the present form?

OPD

3. Whether the suit is false and vexatious and liable to be dismissed with costs of Rs.50,000/-? OPD

4. Whether the plaintiff has remarried after divorcing the defendant, if so, its effect? OPD

5. Relief.

After going through the evidence led by the parties, concurrent finding of fact has been recorded by both the Courts below that marriage of the parties was dissolved by way of private *talaknama* and thereafter, vide exparte judgment dated 08.01.1998 (Ex.D2), a decree of divorce had been passed by the District Judge. Thereafter, an application filed by the plaintiff under Order 9 Rule 13 CPC for setting aside the exparte judgment and decree was dismissed on 06.04.2003.

The plaintiff-appellant has not disputed passing of exparte decree of divorce and dismissal of application for setting aside the exparte decree. The decree of divorce (Ex.D2) on the basis of *talaknama* (Ex.D4) was put to the plaintiff during her cross-examination and she admitted her thumb impression on Ex.D4. As per contention of the defendant-respondent, after passing of exparte decree of divorce (Ex.D2), the plaintiff-appellant had been remarried with one Ghansham, a resident of Sullar Road, Patiala. Mohan Singh (DW-3), who was an employee of the Electricity Department, deposed that he used to deliver bills of electricity charges to the plaintiff at the house of Ghansham. This fact proved that the plaintiff-appellant was

residing with aforesaid Ghamsham. Amar Dev Pandey (DW-6) had proved the marriage of plaintiff-appellant with Ghansham. He deposed that he was a *Pandit* and had performed the marriage of plaintiff with aforesaid Ghansham. As per Section 18 of the Hindu Marriage and Adoption Act, the wife is entitled to maintenance till her marriage is subsisting.

After going through the impugned judgments, this Court is of the view that since marriage of the parties had already been dissolved vide decree of divorce (Ex.D2) and *talaknama* (Ex.D4), the suit of the plaintiff-appellant has been rightly dismissed by the Courts below. No illegality, much less perversity has been found in the impugned judgments warranting interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Dismissed.

(RITU BAHRI)
JUDGE

July 20, 2015

ajp