

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 182 of 2016

Date of Decision:- 13.01.2016

Poonam

...Petitioner

Versus

Hitesh Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present:- Mr. Balraj Gujjar, Advocate,
for petitioner.

SHEKHER DHAWAN, J.

Present petition under Article 227 of the Constitution of India for setting aside the impugned order dated 22.12.2015 passed by District Judge (Family Court) Bhiwani, whereby application under Order 7 Rule 11 of Code of Civil Procedure was dismissed.

2. Learned counsel for the petitioner submits that earlier divorce petition bearing HMA petition No.497 of 2009 was filed by the husband and the same was dismissed vide order dated 20.10.2010 by the then District Judge (Family Court), Bhiwani. Appeal against the judgment dated 20.10.2010 filed before this Court in FAO No.7216 of 2010 was dismissed as withdrawn on 18.09.2013. Thereafter divorce petition under Section 13 (1) (ia) (ib) of the Hindu Marriage Act 1955 was filed on 01.05.2014. An application under Order 7 Rule 11 read with Section 151 CPC was filed by present petitioner and the same was dismissed vide impugned order dated 22.12.2015 and the said order be set aside being not passed in accordance

with law.

3. Having considered the submissions made by learned counsel for the petitioner, this Court is of the considered view that earlier divorce petition was filed which was dismissed as withdrawn vide order dated 19.01.2009 passed by Additional Sessions Judge, Bhiwani. Thereafter FAO No.7216 of 2010 was also withdrawn vide order dated 18.09.2013 passed by this Court. However, on 22.08.2009 when the earlier HMA petition No.497 of 2009 was filed at that time the requisite period of desertion of two years was not complete and that ground of desertion was not available with the petitioner-husband. Thereafter, the subsequent petition was filed before the Court below seeking divorce on the ground of desertion as period was more than two years. Trial Court rightly formed the opinion that the principle of *res judicata* was not applicable so far as the ground of desertion is concerned and rightly rejected the application.

5. In view of above, there is absolutely no illegality calling for setting aside the order dated 22.12.2015 passed by District Judge (Family Court) Bhiwani by way of present revision petition and as such the present petition stands dismissed.

January 13, 2016
mohan

(SHEKHER DHAWAN)
JUDGE