

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 3284 of 2016 (O&M)

Date of Decision: 09.05.2016

Bharat Kumar Dixit

... Petitioner(s)

Versus

Usha Dixit

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Jangvir S. Hooda, Advocate
for the petitioner(s).

Shekher Dhawan, J.

Present petition is against the judgment dated 30.3.2016, passed by learned District Judge, Family Court, Faridabad, whereby *ex parte* order dated 19.4.2011 and *ex parte* judgment & decree dated 19.7.2011 were set aside.

Relevant facts of the case that parties to the litigation were legally wedded husband and wife and out of this wedlock two daughters were born. Thereafter, there was matrimonial dispute and petition for decree for divorce was filed by the petitioner/husband and respondent/wife was proceeded against *ex parte* vide order dated

19.4.2011 and thereafter *ex parte* judgment & decree dated 19.7.2011 was passed. Respondent-wife moved an application for setting aside the *ex parte* order dated 19.4.2011 and *ex parte* judgment & decree dated 19.7.2011 and the said application was allowed vide impugned judgment dated 30.3.2016. Thus, petitioner is before this Court against the impugned judgment & decree.

Learned counsel for the petitioner mainly submitted that respondent was duly served in a petition under Section 13(ia) & (ib) of Hindu Marriage Act, 1955 for dissolution of marriage by decree of divorce and thereafter *ex parte* judgment & decree was passed. The Court below set aside the *ex parte* order as well as *ex parte* judgment & decree without considering all these facts into consideration and as such judgment dated 30.3.2016 is liable to be set aside.

Having considered the submissions made by learned counsel for the petitioner, perusal of the record of the case and the impugned judgment, this Court is of the considered view that most of the facts are not disputed. The only point involved in this case is whether respondent-wife was duly served in the case and aware of the proceedings in divorce petition or it was at the back of the respondent. The Court below has taken correct view while accepting the contention of the respondent-wife that the parties were living together and leading a normal life before and even after the passing of decree of divorce as respondent-wife is a housewife only. She used to put her signatures on blank papers as she was having complete faith in her husband. On this pretext alone, petitioner-husband obtained signatures of the wife,

whereas she never suspected. Otherwise, there was no reason for the respondent-wife to accept the service of summons and thereafter, not to appear and contest the divorce petition.

The Court below has also rightly observed that no document was filed regarding place of residence of the parties in main petition. As per Court below, petitioner-husband had been taking different stand regarding place of residence and the Court below, by taking all these facts into consideration, accepted application for setting aside the *ex parte* order dated 19.4.2011 and *ex parte* judgment dated 30.3.2016. Otherwise also, law on the point is settled that rather than deciding the matter in *ex parte* proceedings, it should be decided on merit after taking into consideration the entire facts and the facts available on the file. That process may take some time. Such a view was taken by Allahabad High Court in ***Smt. Sudesh & Others v. Addl. Dist. Judge & Others 2006(4) CivCC 142.***

As regard to the period of limitation, application for setting *ex parte* proceedings has been filed from the date of knowledge and that plea has rightly been accepted by the Court.

In view of above, there is no illegality in the judgment & decree dated 30.3.2016. Thus, present petition is without any merit and the same stands dismissed, *in limine*.

(Shekher Dhawan)
Judge

May 09, 2016
"DK"