

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

CR No.4510 of 2016(O&M)

Date of decision:17.11.2016

Harsh Dhiman

....Petitioner

VERSUS

Hansa Kalia

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Amit Aggarwal, Advocate for the petitioner.

REKHA MITTAL, J.

The present petition directs challenge against order dated 13.05.2016 passed by the Additional District Judge, Jalandhar whereby application filed by the respondent under Order 9 Rule 13 of the Code of Civil Procedure, 1908 (in short 'CPC') for setting aside ex parte judgment and decree dated 13.02.2015 has been allowed.

The petitioner filed a petition under Section 13 of the Hindu Marriage Act, 1955 (in short 'the Act') for dissolution of marriage by way of decree of divorce. The respondent-wife was proceeded against ex parte vide order dated 05.02.2015 and eventually the petition culminated in ex parte judgment and decree on 13.02.2015.

The respondent-wife filed the application (Annexure P-1) dated 13.02.2015 for setting aside the ex parte judgment and decree and the same has been allowed by the Additional District Judge, Jalandhar.

Counsel for the petitioner has submitted that on 13.02.2015, ex parte evidence of the petitioner was recorded but a day prior thereto i.e. 12.02.2015, the respondent-wife executed a Special Power of Attorney in

favour of Sh. Ram Chhabra son of Sh. Krishan Lal Chhabra, resident of Bhargav Nagar, Nakodar Road, Jalandhar, authorizing him to contest the divorce petition pending in the District Court at Jalandhar, sufficient to prove that the respondent-wife knew about pendency of the proceedings prior to 12.02.2015 but she intentionally did not put in appearance. To further substantiate his contention, it is argued that in the Special Power of Attorney (Annexure P-6), the respondent has given the same address as was given in the petition and summons sent by the Court for service of the respondent on the said address were received back with the report that she is not residing at the given address which further proves that she not only avoided receipt of process sent by the Court but gained knowledge of pendency of petition. It is further argued that in the application for setting aside ex parte judgment and decree, the respondent-wife has raised contradictory pleas. On one hand, she has averred that she is willing to resume cohabitation but on the contrary she has levelled allegations assassinating character of her husband, therefore, no useful purpose would be served by setting aside decree of divorce as there is no life left in matrimony.

I have heard counsel for the petitioner, perused the paper-book and the records.

The petition for divorce was filed in August, 2014 and the respondent was ordered to be summoned through registered cover for 26.09.2014. Notice sent through registered cover was received back with the report that respondent is not residing at the given address and the petitioner was directed to file correct address of the respondent within five days and thereafter notice to the respondent again through registered cover for 12.11.2014. On 12.11.2014, again an order was made for filing of

correct address of respondent within five days and then notice to the respondent through registered cover for 03.01.2015. Notice sent to the respondent through registered cover was again returned with the report that she is not residing at the given address. Counsel for the petitioner before the trial Court represented that the respondent is willfully avoiding service and she is living at the address given in the petition. However, an application was filed for substituted service of the respondent. The same was allowed and the respondent was ordered to be served through publication in the newspaper "English Tribune" and the case was adjourned to 05.02.2015. On the basis of publication in the newspaper, respondent was proceeded against ex parte.

It is an undisputed position of the case that the respondent was residing in U.K. from the date of filing of the petition till the proceedings culminated in ex parte judgment and decree dated 13.02.2015. The trial Court did not bother to examine if the respondent could be served through publication in a newspaper that has no circulation outside India. Not only this, respondent was proceeded against ex parte on 05.02.2015 and the case was adjourned to 13.02.2015 for recording ex parte evidence. Above all, three witnesses were examined on 13.02.2015 by way of affidavits; ex parte evidence was closed; arguments were heard and the ex parte judgment and decree was passed. The manner in which the trial Court proceeded to initiate ex parte proceedings on the basis of publication in a newspaper that does not have circulation in U.K., case being adjourned just for 8 days after initiating ex parte proceedings and completing the proceedings on the very same day by dissolving marriage of the parties certainly shows that the present case is a glaring example of "justice hurried justice buried".

The respondent-wife filed the application for setting aside ex parte judgment and decree on 05.03.2015 sufficient to negate plea of the petitioner that either she did not want to contest the proceedings or she is not interested in matrimonial relationship. The Special Power of Attorney executed by the respondent admits of her knowledge qua pendency of divorce proceedings. It has been specifically mentioned that her husband Harsh Dhiman informed her that he has filed a divorce petition in the District Courts Jalandhar.

Keeping in view the facts and circumstances discussed hereinbefore coupled with the serious consequence likely to ensue for the respondent-wife, had the ex parte judgment and decree of divorce be not set aside, I do not find any error much less illegality in the impugned order warranting intervention. I would hasten to add that a serious error committed by the trial Court by allowing ex parte judgment and decree for divorce within a period of 8 days from initiating ex parte proceedings and within a period of 6 months from the date of petition has rightly been rectified by allowing the application and setting aside the ex parte judgment and decree.

For the foregoing reasons, finding no merit, the petition fails and is accordingly dismissed in *limine*.

However, nothing stated in this order shall be construed as an expression of opinion on the merits of the case.

NOVEMBER 17, 2016

‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no