

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

CR No.463 of 2016

Decided on: 25.01.2016

Thomas . . . Petitioner

Versus

Dimple . . . Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. J.S. Grewal, Advocate
for the petitioner.

AMOL RATTAN SINGH, J. (Oral)

By this petition the petitioner seeks setting aside of the order dated 05.01.2015 passed by learned Additional Civil Judge (Senior Division), Ferozepur, on the ground that the petition filed by the respondent herein has been so filed under the provision of Section 9 of the Hindu Marriage Act, 1955, whereas both the parties are Charistians and the said petition is, therefore, not maintainable.

A perusal of the petition filed by the present petitioner (Annexure P-5), shows that there is no reference at all to Section 9 of the Hindu Marriage Act, or to any other provisions of the said

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Act, in the entire petition. However, learned counsel has pointed to certain notings made by hand and by computer by the office staff of the District Courts, Ferozepur, and also to an order dated 03.09.2015 (Annexure P-7) passed by the learned Chief Judicial Magistrate, Ferozepur, referring to the petition filed by the respondent herein as one under Section 9 of the Hindu Marriage Act. Neither the notings/computer printouts by the office staff of the District Courts, Ferozepur, nor any order passed by the Court, referring to provisions of an Act which is not at all relied upon or even mentioned in the petition, can be cited to the detriment of the petitioner, when the petitioner herself has not resorted to those provisions, which are obviously inapplicable to her.

Very fairly, learned counsel for the petitioner has, on query of the Court, pointed to Section 32 of the Divorce Act, 1869, wherein the provision for instituting a petition for restitution of conjugal rights has been incorporated. Obviously, the Court below, seized of the petition (Annexure P-5) filed by the respondent, would treat that petition as one filed under Section 32 of Divorce Act, 1869 and not under Section 9 of the Hindu Marriage Act, 1955 and decide the same wholly on its merits.

Hence, this petition is wholly without merit and, with the above observations, is dismissed.

[AMOL RATTAN SINGH]
JUDGE

25.01.2016
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