

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 5840 of 2014 (O&M)
Date of decision : April 29, 2016

Smt. Kamlesh

..... Petitioner

Versus

Prem Chand

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ashok Kaushik, Advocate
for the petitioner.

Mr. Pardeep Goyal , Advocate
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

CM No. 8626-CII of 2016

C.M.is allowed.

Annexure A-1 taken on record.

CR No. 5840 of 2016 (O&M)

The petitioner-plaintiff is aggrieved of the order dated 1.7.2014 passed by Additional District Judge, Palwal whereby application for setting aside ex-parte judgment and decree dated 21.7.2012 & ex-parte order dated 17.5.2012 has been dismissed.

Mr. Ashok Kaushik, learned counsel appearing on behalf of the petitioner submits that on all occasions the petitioner-wife had been appearing along with the counsel, even cross-examined the witnesses, only on the date i.e.17.5.2012 did not appear and the trial

court proceeded her ex-parte at 12.35 P.M.

He further submits that on coming to know about ex-parte judgment dated 21.7.2012, application dated 4.8.2012 was filed but the same has been dismissed holding the petitioner-wife to be negligent and careless in pursuing the matter, thus urges this Court that the order is not justified.

Mr. Pardeep Goyal, learned counsel appearing on behalf of the respondent submits that the respondent-husband has performed marriage on 10.2.2015 and the marriage certificate was obtained on 3.4.2015 and therefore, a valuable right has accrued, thus even if ex-parte proceedings are set aside, no purpose would be served.

He further submits that no explanation has come forth in not moving the application after having been proceeded against ex-parte on 17.5.2012. In essence explanation of two months is conspicuously wanting, thus urges this court for affirming the order under challenge.

I have heard learned counsel for the parties, appraised the paper book and of the view that the order under challenge is not sustainable, for, the court at the time of passing ex-parte judgment has not noticed the fact that ex-parte proceedings against the petitioner-wife were initiated at 12.35 P.M. On all occasions the petitioner had been appearing along with counsel and even cross-examined the witnesses to some extent. The respondent-husband has already performed the marriage, which shall be subject to outcome of the divorce petition as it has already been observed in

the order under challenge. The court below ought to have examined all these aspects. A party cannot be made to suffer for lapse of the counsel in view of the judgment rendered by Hon'ble Supreme Court in **Rafiz Vs.Munshi Lal and another AIR 1981 SC 1400.**

Accordingly, the impugned order aforementioned is set aside. The ex-parte judgment and decree of the court below is set aside. The divorce petition is restored back to its original number. The trial court shall proceed with the trial from the stage at which it was.

The revision petition stands allowed.

(AMIT RAWAL)
JUDGE

April 29 , 2016
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