

CR No.6869 of 2016

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

CR No.6869 of 2016

Date of decision:17.10.2016

Jasbir Singh

... Petitioner

Vs.

Krishna Devi

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Avtar S. Khinda, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

Petitioner-husband is aggrieved of the findings rendered in paragraph 6 of the order dated 20.04.2013 and as well as impugned order dated 27.07.2016, vide which the application for recalling of the aforesaid findings had also been dismissed.

Mr. Avtar S. Khinda, learned counsel appearing on behalf of the petitioner - husband submits that the petitioner had filed a divorce petition bearing No.60 of 2011 against the wife for dissolution of the marriage. The ex parte proceedings were initiated against the respondent-wife on 24.10.2011 which resulted into passing of the ex parte judgment and decree dated 11.11.2011 (Annexure P-1). The respondent-wife moved an application under Order 9 Rule 13 of Code of Civil Procedure (hereinafter referred to as "CPC") which has been allowed while setting aside the ex parte judgment and decree dated 11.11.2011 and the divorce petition was dismissed for non-appearance. In this regard, an application

was moved which was dismissed vide order dated 27.07.2016 (Annexure P-4) on the premise that the application is not maintainable and the remedy is of filing the revision or appeal.

I have heard learned counsel for the petitioner and appraised the paper book and of the view that the findings rendered in paragraph 6 by the Court below while allowing the application under Order 9 Rule 13 CPC read thus:-

“6. In the light of above discussion, it is concluded that there are sufficient grounds for setting aside the ex parte judgment and decree dated 11.11.2011, as the applicant/respondent was not personally served in the petition under Section 13 of the H. M. Act, in which the impugned ex parte judgment and decree has been passed. So, accordingly, this application is accepted. The impugned judgment and decree dated 11.11.2011 stand set aside. Then, it is also to note that respondent/petitioner has also not come present to contest this application. So, the petition filed by respondent-petitioner under Section 13 of the Hindu Marriage Act stands dismissed and disposed of accordingly. File be consigned to record room.”

No doubt, the application under Order 9 Rule 13 CPC was allowed and the ex parte judgment and decree dated 11.11.2011 was set aside but the Court below ought not to have dismissed the petition filed under Section 13 of Hindu Marriage Act on the ground that the petitioner had not come present which tantamounts to miscarriage of justice. The

Court below should have recalled the order but the application has been dismissed.

I am of the view that once the ex parte judgment and decree has been set aside, liberty should have been granted to the petitioner to file the written statement and contest the same but not in the manner and mode.

Accordingly, the aforementioned findings rendered in the order dated 20.04.2013 and as well as the impugned order dated 27.07.2016 are set aside. The divorce petition bearing No.60 of 2011 is restored back to its original number.

I am allowing this revision petition without issuing notice of motion to other party/respondent which would delay the object sought to be achieved and will unnecessarily delay the adjudication of the lis, much less, to defray the costs of litigation.

Accordingly, the revision petition stands allowed.

(AMIT RAWAL)
JUDGE

October 17, 2016
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No