

IN THE HIGH COURT OF PUNJAB & HARYAN AT CHANDIGARH

CR No.7520 of 2013 (O&M)

Date of Decision: 25.05.2016

Indu @ Bindu

.....Petitioner

Versus

Rajneesh & another

....Respondents

CORAM: HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Sachin Mittal, Advocate for the petitioner.

Mr. Ram Pal Verma, Advocate for respondent No.1.

Darshan Singh, J.

The present revision petition has been preferred against the order dated 21.9.2013 passed by the learned Additional District Judge, Jhajjar vide which the application under Order 9 Rule 13 of the Code of Civil Procedure (hereinafter called 'the CPC') moved by the petitioner for setting aside the ex parte judgment and decree dated 15.6.2011 under Section 13 of the Hindu Marriage Act, 1955, has been dismissed.

2. Notice of this revision petition was also issued to respondent No.2 but learned counsel for the petitioner contended that respondent No.2 is only a proforma respondent and no relief has been sought against him in the present revision petition. The impugned ex parte decree has been passed only in favour of respondent No.1.

3. So, the service of respondent No.2 was dispensed with.

4. Learned counsel for the petitioner contended that the petitioner

has moved the application under Order 9 Rule 13 CPC for setting aside the ex parte judgment and decree dated 15.6.2011 passed by the learned Additional District Judge, Jhajjar in favour of respondent No.1. He contended that various factual pleas were raised by the petitioner in the application. The petitioner was proceeded against ex parte on the basis of report of refusal which has been specifically denied in the application but the learned trial Court has dismissed the application without framing any issue and affording any opportunity to the petitioner to lead the evidence which has resulted in miscarriage of justice. The learned trial Court should have framed the issues and should have decided the application after recording the evidence of the parties.

5. Mr. Ram Pal Verma, learned counsel for respondent No.1 has not disputed the fact that impugned order has been passed by the learned trial Court without recording any evidence of the parties. However, he contended that the petitioner was duly served and thereafter, he has been proceeded against ex parte.

6. I have duly considered the aforesaid contentions.

7. From the perusal of the impugned order as well as the contentions raised by the learned counsel for the parties, it is evident that the learned trial Court has decided the application filed by the petitioner under Order 9 Rule 13 CPC without framing issues and without affording any opportunity to the parties to lead their evidence. The petitioner has raised various factual pleas in the application which have been controverted by the respondents. The petitioner has specifically disputed the report of refusal on the summons. Interest of justice requires that the learned trial Court should have granted the opportunity to the parties to

prove their respective pleas by leading the evidence and then decide the application moved by the petitioner.

8. In view of my aforesaid discussion, the present revision petition is hereby allowed. The impugned order dated 21.9.2013 passed by the learned trial Court is hereby set aside. The case is remitted to the Court of learned Additional District Judge, Jhajjar to decide the application moved by the petitioner under Order 9 Rule 13 CPC afresh in accordance with law and as per the aforesaid observations.

9. The parties are directed to appear before the learned trial Court on 8.7.2016.

May 25, 2016
ps

(DARSHAN SINGH)
JUDGE