

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

C.M. NO.8451 CII OF 2012 &

F.A.O. NO.1993 OF 2012

DATE OF DECISION: MAY 19, 2016

Rishu

.....Appellant

VERSUS

Janak Raj

....Respondent

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

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

Present: Mr. Diwan S. Adlakha, Advocate,
for the appellant.

Mr. Viney Saini, Advocate,
for the respondent.

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No.8451 CII of 2012

Prayer in this application is for condonation of delay of 15 days
in filing the appeal.

For the reasons mentioned in the application, which are duly
supported by an affidavit of the applicant-appellant, the same is allowed.

Delay of 15 days in filing the appeal stands condoned.

F.A.O. No.1993 of 2012

Notice of motion.

Mr. Viney Saini, Advocate, accepts notice on behalf of the

respondent.

Challenge in this appeal is to the order dated 23.08.2011 passed by the Additional District Judge, Yamuna Nagar at Jagadhri, vide which an application for setting-aside exparte order dated 08.12.2009 and consequently for setting-aside the exparte judgement and decree dated 08.12.2009, whereby a decree for divorce was granted to the respondent-husband, has been dismissed.

It is the contention of learned counsel for the appellant that on 04.11.2009, when the case was listed for evidence of the respondent-husband, his evidence was recorded and on the said date, the case was adjourned to 08.12.2009. She did not get to know that the evidence of the respondent had been closed and the case was listed for evidence of the appellant on 08.12.2009. His further submission is that during the interregnum period, she was convicted in FIR No.214, dated 11.07.2007 on 26.11.2009, because of which the appellant could not put in appearance on the date fixed i.e. 08.12.2009. Because of her non-appearance on 08.12.2009, she did not come to know that she had been proceeded against exparte and exparte decree had been passed against her and, thus, could not move an application for setting it aside. She actually came to know about the said fact through her brother when he came to meet her on 17.04.2010 and it is immediately thereafter, she moved an application on 17.05.2010 after engaging a counsel and collecting all the papers. There has not been any delay on the part of the appellant in approaching the Court and the dismissal of the application by the Court below vide the impugned order dated 23.08.2011 is, thus, not sustainable and deserves to be set-aside.

On the other hand, learned counsel for the respondent submits

that even if the plea of the petitioner that she had been convicted on 26.11.2009, which fact had shaken her and, therefore, she could not appear on 08.12.2009, is accepted, the fact remains that she was aware of the date fixed before the Court and, therefore, even if she was unable to appear on the date fixed, no efforts were made by her to verify the result of the petition, which was pending before the Court. There is no explanation put-forth by the petitioner that for the period from 08.12.2009 to 17.04.2010 as to what she was doing. He, therefore, asserts that there is an unexplained inordinate delay on the part of the appellant, especially when the period prescribed for setting-aside an exparte order/decreed is 30 days from the date of knowledge and she cannot say that she was not aware of the date fixed before the trial Court and, thus, should have immediately taken steps to verify the outcome/fate of the case after 08.12.2009. He, therefore, contends that the impugned order, being in accordance with law and based on proper appreciation of the pleadings and being as per the facts on record, do not call for any interference by this Court.

I have considered the submissions made by learned counsel for the parties and with their assistance have gone through the impugned order.

The factum of registration of an FIR against the appellant and her conviction on 26.11.2009 is not in dispute. It is also not disputed that on 08.12.2009, when the case was fixed before the Court, evidence of the respondent was recorded and on the said date, the appellant had appeared along with her counsel in the Court. It is, therefore, difficult to believe that she was not aware that evidence of the respondent has been closed on the said date and the case has been listed on 08.12.2009 for her evidence. In any case, on 08.12.2009, she was required to appear before the Court either

herself or through counsel, but neither the appellant nor her counsel appeared on the said date. No explanation whatsoever has been given as to why she had not appeared on the said date i.e. 08.12.2009. Assuming because of her conviction on 26.11.2009, she was not in the right frame of mind on 08.12.2009 and, therefore, could not appear on the said date but thereafter she had not taken any step to verify the outcome of the proceedings, which were held on 08.12.2009. It appears that she had, after her conviction, accepted the fate of the case and had been taking no steps to verify the next date of hearing of the case. It appears that only after she came to know on 17.04.2010 and that too when her brother informed her that she became active again and had thereafter filed an application on 17.05.2010. There is no justification and explanation for the period from 08.12.2009 to 17.04.2009 and, therefore, the rejection of the application for setting-aside the exparte order and the judgement passed by the Court below cannot said to be not in accordance with law in any manner. The findings as recorded by the Court in the impugned order being in accordance with law do not call for any interference by this Court.

It has come on record that after the expiry of the period of limitation as prescribed under the statute, the respondent has got married second time.

In view of the above, the appeal stands dismissed being devoid of merit.

May 19, 2016
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE