

FAO No. 6808 of 2016 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

FAO No. 6808 of 2016 (O&M)

Date of Decision: November 22, 2016

Rakesh Khanna

...Appellant

Versus

Sheetal Khanna

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. M.D. Khan, Advocate  
for the appellant.

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AUGUSTINE GEORGE MASIH, J. (Oral):

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Application is allowed, as prayed for.

Photocopies of the impugned order dated 01.09.2016 as also the judgment and decree dated 07.10.2014 (Annexure A-1) are taken on record, subject to all just exceptions.

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Present appeal has been filed challenging the order dated 01.09.2016 passed by the Additional District Judge, Ludhiana, whereby, an application under Order 9 Rule 13 read with Section 151 of the Code of Civil Procedure (hereinafter referred to as 'CPC) for setting aside the *ex parte* judgment and decree dated 07.10.2014, vide which, the petition preferred by the respondent under Section 13 of the Hindu Marriage Act, for dissolution of marriage by decree of divorce was allowed, has been

dismissed.

It is the contention of the learned counsel for the appellant that the appellant appeared before the Court for the first time on 13.08.2014 and engaged a counsel, namely, Shri Manoj Lekhi, Advocate. The next date of hearing was 03.09.2014 for filing written reply. On the said date, he could not appear before the Court because of his illness as he was suffering from Lumbago and Vertigo. He contends that the counsel also did not appear on behalf of the appellant on the said date because of which the appellant was proceeded *ex parte*. On the next date of hearing i.e. 07.10.2014, on the basis of the evidence which has been lead by the respondent, decree of divorce has been granted in her favour *ex parte*. As a matter of fact when enquiry was made by the appellant from Sh. Manoj Lekhi, Advocate, who had been engaged by the appellant, he informed the appellant that the case is fixed for 26.11.2014. When he approached the Court, he came to know about the *ex parte* decree dated 07.10.2014 passed by the Court against the appellant. An application under Order 9 Rule 13 read with Section 151 of CPC was then preferred on 29.11.2014 brining the true facts to the knowledge of the Court below but the learned Additional District Judge, Ludhiana has not appreciated the facts in the correct perspective while deciding the issues which were framed. He, accordingly, contends that the order passed by the Additional District Judge, Ludhiana, dated 01.09.2016, cannot sustain and deserves to be set aside.

I have considered the submissions made by the learned counsel for the appellant and with his assistance, have gone through the impugned

order as also the documents which have been produced in Court one of which is a medical certificate dated 08.09.2014 issued by the Sharma Clinic and Clinical Laboratory, Gulati Chowk, Model Town Market, Ludhiana.

As regards the contention of the learned counsel for the appellant with regard to engaging Shri Manoj Lekhi, Advocate, as his counsel to defend him in the Court below, suffice it to say that Shri Manoj Lekhi, Advocate, had appeared as a witness as RW-2 ,who had stated that he did not even know the appellant nor has he met him or received instructions or Power of Attorney to defend him in the case titled as Sheetal Khanna Vs. Rakesh Khanna. Nothing has come on record which would indicate that some fee was settled between the appellant and Shri Manoj Lekhi, Advocate, as no such suggestion has been put to him in his cross-examination. Appellant has also failed to prove that he had engaged Shri Manoj Lekhi, Advocate, and the averment, thus, made in the application has been found to be false.

That apart, as regards the medical certificate dated 08.09.2014 issued by Sharma Clinic and Clinical Laboratory, Gulati Chowk, Model Town Market, Ludhiana, suffice it to say that the certificate which has been issued by Dr. Sandeep Sharma is a specialist in Diabetes, Thyroid and Hormonal Disorders, who has nothing to do with the back-bone or any spinal injury or treatment thereof. The said certificate, thus, cannot be relied upon.

Perusal of the record further indicates that there has been delay in filing the application for setting aside the *ex parte* order and keeping in

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view the fact that the appellant has failed to prove that he had engaged Shri Manoj Lekhi as an Advocate to defend him in the case filed by Smt. Sheetal Khanna against him under Section 13 of the Hindu Marriage Act, the delay has not been explained. On this ground also, the dismissal of the application preferred by the appellant by the Court below cannot be faulted with.

The order as passed by the Additional District Judge, Ludhiana, on 01.09.2016, which is impugned in the present appeal, being in accordance with law and based upon proper appreciation of the pleadings and the evidence brought on record, cannot be faulted with especially when the *bona fides* of the appellant have been tested on the ground that he has not even engaged a counsel and made an assertion to that effect which proves the inaction on the part of the appellant as also lack of diligence. It rather shows the negligent and casual approach of the appellant.

The present appeal, therefore, stands dismissed.

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In view of the order passed in the main appeal, no order is required to be passed in the present application for staying the operation/execution of the judgment and decree dated 07.10.2014 as the same has been rendered infructuous.

Disposed of as such.

( AUGUSTINE GEORGE MASIH )  
JUDGE

November 22, 2016

Harish

Whether speaking/reasoned:  
Whether Reportable:

Yes/No  
Yes/No