

TA-216-2015

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

TA-216-2015 (O & M)

Date of Decision: 09.02.2016

Babita Rani

... Applicant (s)

Versus

Sushil Kumar

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- 1) Whether Reporters of the 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 ?

Present: Mr. Sanjeev Sharma, Advocate,
for the applicant.

Mr. Harshit Jain, Advocate,
for the respondent.

Paramjeet Singh Dhaliwal, J. (Oral)

Instant application under Section 24 of the Code of Civil Procedure has been filed seeking transfer of execution petition titled as 'Sushil Kumar vs. Babita Rani' arising from the *ex parte* judgment and decree dated 08.09.2006 passed by the trial Court in favour of the respondent in a petition filed by the respondent under Section 9 of the Hindu Marriage Act and further for transfer of application filed by the applicant under Order 9 Rule 13 CPC for setting aside the judgment and decree dated 08.09.2006 from the Court of Sh. Amandeep Kamboj, PCS, Civil Judge (Jr. Divn.), Dhuri to Chandigarh.

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I have heard learned counsel for the parties and perused the record.

Learned counsel for the applicant contends that the respondent filed petition under Section 9 of the Hindu Marriage Act for restitution of the conjugal rights against the applicant and the same has been allowed vide *ex parte* judgment and decree dated 08.09.2006. The applicant has filed an application under Order 9 Rule 13 CPC for setting aside the *ex parte* judgment and decree dated 08.09.2006 pending in the Court of learned Civil Judge (Jr. Divn.), Dhuri. The applicant is serving in this Court and is staying with her minor children in Chandigarh. The applicant also filed a case under Section 406/498-A IPC, but with the intervention of the respectables, the same has been withdrawn. The applicant has filed a petition under Section 125 Cr.P.C. against the respondent in Chandigarh. Learned counsel for the applicant relied upon the judgment of Hon'ble Supreme Court in ***Deepti Bhandari v. Nitin Bhandari and another***, 2012(1)R.C.R.(Civil) 506 and contended that it would be easier for the respondent-husband to attend the proceedings in Chandigarh than for the applicant to attend the same in Dhuri. The respondent has not paid even a single penny of interim maintenance. Therefore, the application under Order 9 Rule 13 CPC along with execution petition may be transferred to Chandigarh.

Per contra, learned counsel for the respondent has vehemently opposed the contentions of learned counsel for the applicant and contended that the applicant is not required to appear on each and

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every date in the application under Order 9 Rule 13 CPC filed by her.

I have considered the rival contentions of learned counsel for the parties.

Admittedly, the applicant is residing in Chandigarh along with her minor children. It is very difficult for the applicant to attend the proceedings in Dhuri while serving in Chandigarh. Perusal of application also reveals that criminal proceedings initiated against the respondent have also been withdrawn by the applicant with the intervention of the respectables. As per the applicant, the respondent has not paid even a single penny as interim maintenance. The conduct of respondent apparently appears to be lackadaisical. In view of the facts as mentioned above and in view of law laid down by the Hon'ble Supreme Court in **Deepti Bhandari** (supra), the execution petition titled as 'Sushil Kumar vs. Babita Rani' arising from the *ex parte* judgment and decree dated 08.09.2006 passed by the trial Court in favour of the respondent in a petition filed by the respondent under Section 9 of the Hindu Marriage Act and application filed by the applicant under Order 9 Rule 13 CPC for setting aside the *ex parte* judgment and decree dated 08.09.2006, pending in the Court of Sh. Amandeep Kamboj, PCS, Civil Judge (Jr. Divn.), Dhuri are withdrawn from the Court of Civil Judge (Jr. Divn.), Dhuri and transferred to learned First Addl. District Judge, Mohali, who may assign the same to the Court of competent jurisdiction there. Learned Civil Judge (Jr. Divn.), Dhuri shall ensure that entire record of the case is sent to learned First Addl. District Judge, Mohali.

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The parties are directed to appear before the learned First Addl. District Judge, Mohali on 29.02.2016.

Disposed of.

The concerned courts be informed through FAX/e.mail.

09.02.2016
parveen kumar

(Paramjeet Singh Dhaliwal)
Judge