

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

**CIVIL REVISION No. 5809 of 2015
DECIDED ON: MARCH 15, 2017**

SIMARJIT KAUR

.....PETITIONER

VERSUS

GURMAIL SINGH

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. C.M.Munjai, Advocate
for the petitioner.

Mr. J.S. Brar, Advocate
for the respondent.

JASPAL SINGH, J

By virtue of instant revision preferred under Article 227 of the Constitution of India, petitioner has sought the quashing/setting aside of order dated March 17, 2014 passed by learned District Judge, Sri Muktsar Sahib whereby, an application moved by the petitioner for treating issue No.3 pertaining to the applicability of principle of resjudicata, as preliminary issue; has been dismissed.

The contention of learned counsel for the petitioner is that an application was moved by the petitioner-wife for treating the preliminary issue with regard to the applicability of principle of resjudicata in the

divorce petition preferred by her husband against her, in view of the decision of previous petition preferred by him under Section 13 of the Hindu Marriage Act, 1955 (for short 'Act'), which was dismissed vide judgment dated April 11, 2009 passed by learned Additional District Judge, Sri Muktsar Sahib but that application has been erroneously and illegally dismissed by learned District Judge, Sri Muktsar Sahib vide impugned order dated March 17, 2014 by observing that an issue with regard to the applicability of principle of resjudicata cannot be treated as preliminary issue as the grounds taken in the divorce petition i.e. desertion and cruelty are continuous wrong and each day would give a fresh cause of action to the wronged spouse and further that even issue of principle of res judicata cannot be treated as preliminary issue even when only little evidence to be produced i.e. Copies of judgment in earlier litigation between the parties etc. but the afore-said observations made by learned District Judge, Sri Muktsar Sahib are wrong. In fact the principles of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res judicata, it shall not be adjudged again. When a matter, whether on a question of fact or a question of law has been decided between two parties in one suit or proceedings and the decision is final. Neither party to it would be allowed in a future suit or proceedings between the same parties to canvas the matter again. Earlier petition was also filed by respondent-husband on the same grounds i.e. desertion and cruelty, which has already been dismissed vide judgment and decree dated

April 11, 2009 and on the same grounds another petition has been filed by respondent-husband in the month of last week of November 2013.

Moreover, an application was only filed by the present petitioner-wife for treating an issue with regard to the applicability of principle of res judicata and the matter in issue was to be decided by learned District Judge after hearing the parties and appraisal of documents to be tendered by the parties to the petition, which has not been done in the instant case. Thus, the impugned order is not sustainable in the eyes of law and deserves to be set aside.

On the other hand learned counsel for the respondent has supported the impugned order and while controverting the pleas to be put forth by the petitioner, has submitted that issue pertaining to the applicability of principle of res judicata is being a mixed question of law and facts cannot be treated as preliminary issue. The second contention put forth by learned counsel for the petitioner is that desertion and cruelty are continuous wrong and each day there is fresh cause of action to the wrong spouse. In support of his contention learned counsel for the petitioner has placed reliance upon the pronouncement of this Court delivered in the case of ***Major S.S. Khanna v. Brig. F.J. Dillon; AIR 1964 SC 497*** as well as ***Shyam Lal v. Leelawati; 2007 (4) RCR (Civil) 477.***

After bestowing due consideration to the rival submissions made by learned counsel for the parties and appraisal of the impugned

order, this Court is of the considered view that declining of an application for treating an issue with regard to the applicability of principle of res judicata is wrong and illegal.

Undisputably, respondent-husband previously preferred a petition under Section 13 of the Act for dissolution of his marriage by way of decree of divorce on the ground of desertion and cruelty in the Month of December 2005, which was dismissed on merits vide judgment and decree dated April 11, 2009. The said judgment and decree has become final and conclusive between the parties, as he did not prefer any appeal against it. After about 4 years of dismissal of his previous litigation for dissolution of marriage by way of decree of divorce preferred another petition in the Month of November 2013 on the same grounds i.e. desertion and cruelty. A detailed written statement was filed to the divorce petition *inter alia* taking preliminary objections that petition is barred by principle of res judicata, in view of the dismissal of previous petition vide judgment and decree dated April 11, 2009. Since the issue pertaining to the applicability of principle of res judicata was not treated as preliminary issue. An application was moved in this regard, which has been dismissed by learned District Judge vide impugned order, which necessitated the filing of instant revision, meaning thereby, that the pleadings of the parties and the documents were not taken into consideration by learned trial Judge while passing the impugned order. The principle of res judicata does not completely debar a party to the suit from raising it and further it as a

preliminary issue. The purpose of principle of res judicata is to cut short the litigation, in view of the previous decision between the parties, which has attained finality. Moreover, the pleadings have not been appraised just to determine the applicability of principle of res judicata. In the case of **Satyadhyan Ghosal and others vs. Deorajin Debi and another; AIR 1960 SC 941**; the Hon'ble Apex Court has held that the principle of res judicata is based on the need of giving a finality to judicial decisions. Primarily it applies as between past litigation and future litigation. When a matter, whether on a question of fact or a question of law, has been decided between two parties in one suit or proceedings and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed or no appeal lies, neither party will be allowed in a future suit or proceedings between the same parties to agitate the matter again. The principle of res judicata is embodied in relation to suits in Section 11 of the Code but even where Section 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct.

Adverting to the facts of the case in hand the divorce petition preferred by respondent-husband was dismissed vide judgment and decree dated April 11, 2009, which was also filed on the ground of desertion and cruelty. The desertion and cruelty may be mixed question of law and fact

or that desertion or cruelty are continuous wrongs but once it is *prima facie* established that the previous petition was filed on the similar grounds. The court is atleast obliged to appraise the pleadings and then find out whether any fresh cause of action has arisen or not and this matter can only be decided by treating the issue with regard to the applicability of principle of res judicata as preliminary issue.

As a net result of the afore-said discussion, this Court is of the considered view that the impugned order dated March 17, 2014 passed by learned District Judge, Sri Muktsar Sahib is not sustainable in the eyes of law and the same is set aside/quashed by way of acceptance of instant revision. Consequently, application preferred by the petitioner-wife for treating the issue with regard to the applicability of principle, of res judicata as preliminary issue stands allowed.

The learned trial Court is directed to treat the issue with regard to the applicability of principle of res judicata as preliminary one and to afford ample opportunities to the parties to tender the documents in support of their respective plea(s) and then to decide the same expeditiously.

Disposed of, accordingly.

No order as to costs.

**JASPAL SINGH
JUDGE**

MARCH 15, 2017
sham

Whether speaking/non-speaking ***Yes/No***

Whether reportable ***Yes/No***