

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

-.-

CR 5952 of 2015 (O&M)
Date of decision: 20.11.2017

Rajesh Kumar *Petitioner*

Versus

Suman Kumari *Respondent*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. S S Kharb, Advocate
for the petitioner

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Rekha Mittal, J. (Oral)

CM 20400 CII of 2017

Prayer in this application is for restoration of the petition to its original number which was dismissed for non-prosecution vide order dated 18.09.2017.

In view of averments made in the application supported by an affidavit of clerk of counsel for the applicant and arguments advanced, application is allowed and main petition is ordered to be restored to its original number and stage.

Main case

The present petition directs challenge against order dated 11.08.2015 (Annexure P8) passed by the Additional District Judge, Panipat whereby application dated 21.07.2015 (Annexure P6) for reviewing order qua summoning of the witnesses has been allowed.

The petitioner filed a petition under Section 13 of the Hindu Marriage Act, 1955 seeking dissolution of marriage with Suman Kumari daughter of Sultan Singh and the same was allowed ex parte vide judgment and decree dated 05.11.2012. The respondent-wife filed an application

under Order 9 Rule 13 of the Code of Civil Procedure for setting aside ex parte order dated 29.09.2012 and ex parte judgment and decree dated 05.11.2012. In those proceedings, the petitioner filed the application for summoning four persons namely Sultan Singh (father), Sunita, Saroj (sisters) and Suresh (brother) of the respondent/applicant and on the application dated 12.01.2015, there is an endorsement of the Court permitting the petitioner to deposit Rs.1050.00 as diet money. Later, summons of the witnesses appear to have been issued on the basis of application dated 12.01.2015.

The respondent filed the application for review of order summoning Sultan and others. After reply to the application was filed by the petitioner and having heard counsel for the parties, the Court allowed the application vide order impugned.

The sole submission made by counsel for the petitioner is that once the Court has passed the order summoning Sultan Singh and others and even the summons of the witnesses were issued for procuring their presence, the Court is not competent to review its own order, therefore, the order impugned cannot stand the test of judicial scrutiny and liable to be set aside. It is further submitted that the respondent filed the instant application with a clear intent to prolong the proceedings for divorce.

I have heard counsel for the petitioner and perused the paper book particularly various annexures appended with the petition.

Counsel for the petitioner would inform that Sultan Singh and others (Father, sisters and brother of Suman Kumari) were sought to be summoned so that dispute between the parties may be settled.

Indisputably, the application for summoning the witnesses was

filed in proceedings initiated at the behest of the respondent for setting aside the ex parte order as well as ex parte judgment and decree passed against her. The order allowing the petitioner to deposit Rs.1,050.00 as diet money was not passed by the Court after providing an opportunity of hearing to the respondent nor the endorsement with regard to deposit of Rs.1,050.00 amounts to passing of a judicial order on application of mind. There is nothing on record suggestive of the fact that file of the case was put up before the Presiding Officer when the order with regard to deposit of diet money was made. This Court cannot over look that such like applications for deposit of diet money are allowed without hearing the parties. As a matter of fact, order with regard to deposit of diet money is not a judicial order. In this view of the matter, I find myself unable to be persuaded with the submission that the Court below has erred by rectifying the error and mischief committed by the petitioner. As the witnesses sought to be summoned are not relevant for deciding the controversy with regard to setting aside ex parte judgment and decree of divorce, the order impugned cannot be faulted with.

For the foregoing reasons, the petition fails and is accordingly dismissed.

(Rekha Mittal)
Judge

20.11.2017
mohan bimbira

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No