

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

CR No.612 of 2017.

Date of Decision: 13.02.2017.

Meetu

....Petitioner.

VERSUS

Fakir Chand

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. J.S. Grewal, Advocate for the petitioner.

SNEH PRASHAR, J.

The petitioner is aggrieved of the order dated 17.09.2016 passed by learned Additional District Judge, Fazilka by virtue of which the application under Order VII Rule 11(a) & (b) read with Section 151 of the Code of Civil Procedure (for short, "CPC") filed by petitioner-wife for rejection of the petition, was dismissed.

The submissions made by Mr. J.S. Grewal, learned counsel representing the petitioner have been considered.

The petitioner is a legally wedded wife of the respondent. A petition under Section 13 of the Hindu Marriage Act (for short, "the Act") for dissolution of the marriage was filed by the respondent. The petitioner filed an application under Order VII Rule 11(a) & (b) read with Section 151 CPC for rejection of the petition alleging that earlier also the respondent-husband had filed a similar petition under Section 13 of the Act on the same

concealed by the respondent-husband while filing the petition under Section 13 of the Act.

Learned counsel for the petitioner argued that the first petition under Section 13 of the Act filed by the respondent-husband was dismissed for non payment of maintenance allowance and litigation expenses. Even if it is accepted that the said fact was pleaded by the respondent in his present petition, yet the instant petition filed by him was barred by principle of Resjudicata. To support his argument, learned counsel relied upon **Jagtar Singh vs. Kulwant Kaur alias Balwinder Kaur, 2007(2) R.C.R. (Civil) 48.**

The observation made by this Court in **Jagtar Singh's** case (supra) was in the light of facts of the said case.

In the present case, the petitioner filed an application under Order VII Rule 11(a) & (b) CPC alleging that the petition deserves to be rejected on the ground that the respondent-husband had concealed the factum of dismissal of his earlier petition. However, it was noted in the impugned order by learned trial Court that the fact regarding dismissal of the earlier petition on 18.05.2009 was specifically pleaded by the respondent-husband in Para No.13 of the petition. He had even mentioned that the petition was dismissed for non payment of maintenance allowance and litigation expenses. Thus, the ground on which the petitioner-wife had sought rejection of the plaint was incorrect. Having herself pleaded wrong fact in her application, the petitioner could seek no relief from the Court.

In the impugned order, learned trial Court has reproduced the order by virtue of which the earlier petition filed by the respondent under Section 13 of the Act was dismissed. As indicated in the order, neither the respondent-husband was present nor any other person appeared on his

behalf for payment of maintenance allowance and surprisingly his counsel stated before the Court that he was not caring for the case. The order reflected that the petition was dismissed for non payment of the maintenance allowance and litigation expenses, but the question whether on that ground the instant petition would be barred by principle of Resjudicata would be a matter of evidence to be adduced by both the parties as it had been observed in the impugned order by learned trial Court that the respondent-husband had paid the amount of maintenance allowance and litigation expenses to the petitioner-wife after dismissal of his first petition and thereafter had been regularly paying the amount of maintenance to her as ordered by the Court.

Thus, the order passed by learned trial Court suffers from no illegality or perversity and the petition being devoid of merit is dismissed.

(SNEH PRASHAR)
JUDGE

13.02.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**