

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

Civil Revision No.7154 of 2017

Date of Decision:13.10.2017

Harbans Kaur

.....PETITIONER

V/S

Joginder Pal

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr.Ankit Aggarwal, Advocate for the petitioner.

B.S.WALIA J. (ORAL)

1. Prayer is for setting aside order dated 19.09.2016-Annexure P-3 whereby the petitioner was proceeded ex-parte, ex parte judgment and decree dated 21.10.2016-Annexure P-4 as also order dated 13.09.2017- Annexure P-7 passed by the learned ADJ, Kurukshetra whereby the application for setting aside ex-parte order dated 19.09.2016 and ex parte judgment dated 21.10.2016 was dismissed. Further prayer is for allowing application i.e. Annexure P-5 for setting aside ex-parte order and judgment and for granting an effective opportunity to lead evidence.
2. Learned counsel contended that the petitioner had engaged a counsel who had assured her that he would inform her whenever her presence was required, but her counsel did not give her any information whereupon the petitioner engaged another counsel on 09.01.2017 and inquired about the case and learnt that the Court had passed an exparte order on 19.09.2016 as well as exparte judgment and decree in favour of the respondent on 21.10.2016 dissolving the marriage between the parties.
3. Learned counsel contended that the petitioner had moved an application

before the learned trial Court for setting aside of *exparte* proceedings dated 19.09.2016 as well as *exparte* judgment and decree dated 21.10.2016 alleging that her absence before the learned trial Court on 19.09.2016 was not intentional but due to the reasons as referred to above, and she had recently come to know that respondent-Joginder Pal was planning to solemnize second marriage after getting judgment and decree of divorce dated 21.10.2016, therefore she had moved the application.

4. In reply to the application for setting aside *exparte* order dated 19.09.2016 as well as *exparte* judgment and decree dated 21.10.2016 the respondent took up the stand that the petitioner was regularly appearing in the proceedings before the matrimonial Court and had put in appearance on 18.02.2016, 21.03.2016 and 18.04.2016 i.e. the date's fixed for PWs evidence, whereafter three dates were given to the petitioner for respondent's witnesses but the petitioner failed to produce any evidence on two dates i.e. 11.07.2016 and 22.08.2016 and on the third date i.e. 19.09.2016 absented whereupon the learned Court was pleased to proceed *exparte* against the petitioner on said date. Eventually, *exparte* judgment and decree dated 21.10.2016-Annexure P-4 was passed against the petitioner dissolving the marriage between the parties.

5. The learned Addl. District Judge, Kurukshetra observed that neither had the petitioner proved collusion by her counsel with the respondents counsel nor was the petitioner a simple lady as had been sought to be projected since she had initiated a number of proceedings against the respondent i.e. application under Section 12 of the Protection of Women from Domestic Violence Act which was dismissed as was the appeal

against the said order. In addition, thereto, the petitioner had also filed a criminal case against the respondent which too had ended in the acquittal of the respondent. The learned Additional District Judge, Kurukshetra also took into account that there were four children of the parties to the marriage and the petitioner had left all the children with the respondent-husband. Besides the petitioner's own daughter had deposed against her in the petition for divorce filed by the respondent-husband. After taking into account all aspects of the matter, the learned Additional District Judge, Kurukshetra held that from the circumstances, it could be inferred that the petitioner was well aware of all the dates of hearing and that the absence of the petitioner on 19.09.2016 was intentional, accordingly dismissed the application.

6. Perusal of the paperbook also reveals that a petition was filed by the respondent against the petitioner for dissolution of marriage on the ground of very cruel, barbaric, rude and crude behaviour of the petitioner towards him from the very beginning, of the respondent earlier also having filed a petition for divorce but of a compromise having been arrived at in the same, of the petitioner having filed a petition under Section 12 of the Protection of Women from Domestic Violence Act on 03.05.2011 against the respondent, but the same being dismissed vide against order dated 26.02.2014 while appeal against the same was also dismissed vide order dated 30.08.2014, of the petitioner having got a case registered against the respondent by way of FIR No. 233 dated 07.05.2011 under Sections 323, 325, 506 and 34 IPC at Police Station Nissing, however, the respondent was acquitted in the said case vide judgment dated 12.02.2015, of the petitioner having forcibly tried

to take possession of agricultural land owned and possessed by the respondent situated in village Bhola Khalsa, District Karnal, upon which the respondent was constrained to file a Civil Suit against the petitioner in the Court at Karnal, of the petitioner living in adultery with some other person and in the year 2012 forcibly turning out the respondent along with their four children from the respondents house whereafter the respondent resided in village Samapur, District Kurukshetra in a rented house and of no cohabitation having taken place between the parties thereafter, of the respondent having arranged marriage of his daughter and requested the petitioner to join in the marriage on the said occasion but the petitioner having failed to join even on the said auspicious occasion.

7. Learned counsel for the petitioner has not been able to deny the position as noted above but has confined his submission to the plea that one opportunity be given to the petitioner to contest the case on merit.

8. I have heard learned counsel for the petitioner and perused the record.

After hearing learned counsel for the petitioner and going over the record as referred to above, I am of the considered view that the order passed by the learned Additional District Judge, Kurukshetra does not warrant any interference particularly in view of the petitioner appearing in the proceedings on all dates including 18.02.2016, 21.03.2016 and 18.04.2016 i.e. the dates for PWs evidence as also on 11.07.2011 and 22.08.2016 i.e. . two of the three dates for RWs evidence but failing to put in appearance on the third date i.e. 19.09.2016 on which date she was proceeded exparte.

9. The petitioner has taken up the plea that her counsel had colluded with the respondent's advocate and did not give her any information regarding

the case. However, the aforementioned plea is noticed to be rejected in view of the fact that the petitioner had been regularly appearing on each and every date including the dates for the evidence of the PWs i.e. three dates as also on two of the three dates given for evidence of RWs. However, the petitioner failed to produce any evidence and on the last date failed to put in appearance. Apparently, the absence was intentional and with a view to delay the conclusion of the proceedings. The plea of collusion also does not have any legs to stand in the absence of any complaint having been made by her against her advocate of having colluded with the opposite counsel. In addition thereto, the petitioner is a seasoned litigant as evident from the number of proceedings taken out by her. In the circumstances, the plea as put forth by the petitioner does not inspire confidence. Accordingly, after taking into account all aspects of the matter, I am of the considered view that the order passed by the learned Additional District Judge, Kurukh is a well reasoned order and does not warrant any interference as no case whatsoever has been made out by the petitioner for setting aside of order dated 19.09.2016 whereby she was proceeded ex parte or for that matter ex parte judgment and decree dated 21.10.2016 whereby marriage between the parties was dissolved by decree of divorce on grounds of cruelty and desertion.

Finding no merit in the revision petition, the same is dismissed in limine. No order as to costs.

13.10.2017
Anjal

B.S.WALIA,
JUDGE

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No