

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

212

FAO No.M-158 of 2015 (O&M)
Date of Decision: December 14th, 2017

Guptabh Parijat Lahir

...Appellant

Versus

Mrs. Jyoti

...Respondent

**CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

Present: Mr. Ravi Bhushan, Advocate
for the appellant.

Mr. Piyush Kant Jain, Advocate
for the respondent.

M.M.S. BEDI, J. (ORAL)

Aggrieved by the judgment dated 07.02.2015 passed by the Additional District Judge (Fast Track Court), Ludhiana, allowing petition under Section 9 of the Hindu Marriage Act (hereinafter referred to as 'the Act') for a decree for restitution of conjugal rights in favour of respondent-wife, the appellant-husband has preferred this appeal.

Without going into merits of the petition under Section 9 of the Act, we are of the opinion that on account of an order dated 05.07.2013 passed by Shri S.P. Sood, Additional District Judge, Ludhiana, for adjudication of the petition under Section 9 of the Act filed by the wife along with a petition for divorce under Section 13 of the Act filed by the appellant, the District Judge, Ludhiana, had on 19.07.2013 transferred the proceedings under Section 9 of the Act initiated by the wife to the Court of Shri A.S. Virk, Additional District Judge, Ludhiana, where the petition for divorce filed by the husband was pending. Parties were directed to appear before the Court of Shri A.S. Virk, Additional District Judge, Ludhiana, on 01.08.2013.

The order dated 05.07.2013 passed by the Additional District Judge, Ludhiana and the order dated 19.07.2013 passed by the District Judge, Ludhiana, (Annexures P-2 and P-3 respectively) are reproduced hereunder:-

“During the course of arguments it transpired that a divorce petition between the same parties at the instance of present respondent Guptabh Parijat is also pending adjudication in the court of Shri A.S. Virk, learned Addl. District Judge, Ludhiana. Since present petition is also filed under provisions of Hindu Marriage Act, as such it is desirable that both these petitions should be decided at the one and the same end so as to avoid contradictory judgment. As such reference is hereby made to learned District Judge, Ludhiana, for passing appropriate orders in this regard if deem fit. Parties are directed to appear before learned District Judge, Ludhiana, on 19-7-2013. Ahlmad is directed to send the file complete in all respects before the date fixed.

*(S.P. Sood)
Addl.District Judge,
Ludhiana.5-7-2013”*

“19.07.2013:-

Reference perused and accepted. The file is withdrawn from the court of learned referral court and is transferred to the court of Sh. A.S. Virk, Learned Addl. District Judge, Ludhiana for its disposal in accordance with law. Parties are directed to appear before Learned transferee court on 01.08.2013 at 10 a.m.

*(Gobinder Singh)
District Judge, Ldh.”*

We have seen the record of original file which indicates that the above said two orders are present on the judicial file of the petition under Section 9 of the Act filed by the wife.

It is apparent that on account of petition under Section 9 of the

Act filed by the wife being an old case falling under Action Plan scheme was taken up by the Fast Track Court independent of the divorce petition under Section 13 of the Act and was decided with an objective to comply with the direction of this Court as per the policy of adjudication of all the old cases falling under the Action Plan scheme. It is settled principle of law as laid down in the judgment of Supreme Court in *Ajay Lawania Versus Shobhna Dubey (2010) 15 Supreme Court Cases 354* that if two petitions are filed under the Hindu Marriage Act, one under Section 9 and other under Section 13, then, in order to avoid conflicting decisions, it is expedient that both the cases are heard by the same Court. Direction has been given in the said judgment that evidence in the two cases should be recorded one after the other, arguments should be heard **separately** and thereafter, separate judgments should be delivered on **one day** (emphasis supplied by us by underlining).

It is admitted fact that petition filed by appellant-husband under Section 13 of the Act is pending before the Court of Ms. Sanjeeta, Additional District Judge, Ludhiana. We are of the considered opinion that in order to avoid conflicting decision in proceedings under Section 13 and proceedings under Section 9 of the Act, the same Court should have finally disposed of the matters by passing separate judgments on one day.

This appeal is allowed without expression of any opinion regarding the conduct of the parties on merits or on the basis of the evidence which is available on the record, solely on the ground that the basic principle, in the interest of judicial propriety, as discussed above, has not been followed.

The judgment and decree dated 07.02.2015 is set aside.

The parties are directed to appear before the trial Court where the proceedings under Section 13 of the Act are pending, on 20.01.2018. The pleadings and the evidence of the proceedings under Section 9 of the Act would be kept in abeyance for final adjudication till the decision of proceedings under Section 13 of the Act initiated by the appellant.

However, it will be open to the trial Court to pass any order in the petition under Section 9 of the Act afresh. The petition under Section 9 of the Act may be again allowed or may be dismissed on reappraisal of the evidence but the endeavour of the Court should be to decide the petition under Section 9 of the Act on the same day when the petition under Section 13 of the Act filed by the appellant-husband is decided.

(M.M.S. BEDI)
JUDGE

December 14th, 2017
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No