

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-3415-2017 (O&M)

Date of Decision: 18.5.2017

Balvir Singh

....Appellant.

Versus

Gurpreet Kaur

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU.**

PRESENT: Mr. Preetwinder Singh Dhaliwal, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the appellant against the order dated 18.2.2017 passed by the District Judge, Family Court, Barnala vide which the application filed by him under Order 9 Rule 13 of the Code of Civil Procedure (in short “the Code”) for setting aside the exparte judgment and decree dated 28.8.2015 and the application filed under Section 5 of the Limitation Act, 1963 (for brevity “1963 Act”) for condonation of 221 days' delay in filing the application under Order 9 Rule 13 of the Code were dismissed.

2. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The marriage between the parties was solemnized on 27.1.1985 according to Rikh rites and ceremonies, by way of Anand Karaj. They lived together as husband and wife and cohabited as such. Out of the said wedlock, a daughter, namely, Karanbir Kaur was born

on 17.10.1993. The parties could not pull together as the appellant and his family members used to maltreat and taunt the respondent for bringing less dowry. The respondent was turned out of the matrimonial home by the appellant. When she visited the house of the appellant along with Panchayat members, the appellant and his family members refused to rehabilitate her. She also got registered FIR No. 397 dated 27.12.2007 under Sections 498A/494/323/511/109 of the Indian Penal Code at Police Station Kotwali, Barnala against the appellant. Thereafter, the respondent filed a petition under Section 9 of the Hindu Marriage Act, 1955 (hereinafter referred to as "the Act") for a decree of Restitution of Conjugal Rights. Upon notice, the appellant appeared and filed written statement. Thereafter, the appellant did not appear before the trial Court and was proceeded against exparte. The trial Court on appreciation of the evidence led by the respondent, vide judgment dated 28.8.2015 allowed the petition filed under Section 9 of the Act exparte and directed the appellant to join the company of the respondent. Feeling aggrieved, the appellant filed an application under Order 9 Rule 13 of the Code for setting aside the exparte judgment dated 28.8.2015. Since, the said application was barred by time, an application under Section 5 of the 1963 Act was also filed.

3. Upon notice of the said application, the respondent appeared and filed a written statement. It was pleaded therein that the application had been moved only to harass the respondent as the appellant had knowingly and willfully absented himself from the proceedings of the petition. The Family Court was established at Barnala and the said petition was transferred to the Family Court for 26.5.2015 and on the said date, the counsel for the appellant was also present. The case was adjourned to

8.7.2015 and on which date, neither the appellant nor his counsel appeared in the Court and as such was proceeded against exparte. The matter was adjourned to 11.8.2015 for exparte evidence of the respondent which was concluded on 27.8.2015. Further, the application was time barred. The other averments made in the application were denied and a prayer for dismissal of the same was made.

4. The trial Court after hearing the counsel for the respective parties dismissed the application under Section 5 of the 1963 Act as well as the application under Order 9 Rule 13 of the Code filed by the appellant vide order dated 18.2.2017.

5. Feeling aggrieved, by the order dated 18.2.2017, the appellant has approached this Court by way of instant appeal.

6. After hearing learned counsel for the appellant, we do not find any merit in the appeal.

7. Admittedly the petition under Section 9 of the Act was filed by the respondent on 19.2.2009 and the notice was issued to the appellant for 19.5.2009. The appellant appeared on 8.2.2010 and filed reply to the petition as well as reply to the application for grant of interim maintenance on 3.6.2010. The said application was allowed vide order dated 25.11.2011 by awarding interim maintenance @ ₹ 5000/- per month to the respondent from the date of filing of the application, i.e. 19.2.2009. The respondent then examined in chief AW1 Jaspal Singh and recorded her examination-in-chief on 14.1.2013 and thereafter, the case remained pending for cross examination of AW1 Jaspal Singh and the respondent-wife and also for remaining evidence of the respondent-wife and the case was adjourned to 28.5.2015 as per order dated 3.4.2015 for the said purpose. In the

meantime, the Family Court was established at Barnala. The said petition was transferred to the Family Court and was taken up on 26.5.2015 in the presence of the counsel for the appellant and was adjourned to 8.7.2015 instead of 28.5.2015. However, on the said date neither the counsel nor the appellant appeared and was proceeded against exparte vide order dated 8.7.2015. The exparte evidence of the respondent was concluded on 27.8.2015 and the trial Court passed the exparte decree on 28.8.2015. On the basis of the said decree, the respondent filed execution application on 22.12.2015 and the notice of the same was issued to the appellant for 15.1.2016. On the said date, the appellant appeared through his counsel and came to know about the exparte decree of the petition filed under Section 9 of the Act. However, he moved an application under Order 9 Rule 13 of the Code for setting aside the exparte judgment and decree dated 28.8.2015 on 5.4.2016 after a period of more than three months after the appearance on 15.1.2016. Since, the said application was barred by limitation, the appellant also moved an application under Section 5 of the 1963 Act for condonation of 221 days' delay in filing the application under Order 9 Rule 13 of the Code. The trial Court had recorded that the appellant could not show good and sufficient cause for allowing the application under Section 5 of the 1963 Act and dismissed the said application. As a consequence thereof, the application under Order 9 Rule 13 of the Code was also dismissed by the trial Court.

8. Learned counsel for the appellant has not been able to give any justified and plausible explanation in filing the application for setting aside the exparte decree on 5.4.2016 especially when he had already put in appearance on 15.1.2016 in execution proceedings. The appellant was in

the knowledge of exparte decree on 15.1.2016 and, therefore, was required to have acted with promptitude and without any delay. No satisfactory explanation had been furnished by the appellant. Thus, there is no illegality or perversity in the finding recorded by the trial Court which may warrant interference by this Court. Further, referring the the judgment in **State of Nagaland v. Lipok AO and others 2005 (2) RCR (Civil) 375** relied upon by the learned counsel for the appellant, suffice it to notice that the said pronouncement being based on its own facts does not advance the case of the appellant. Accordingly, finding no merit in the appeal, the same is hereby dismissed.

9. There is a delay of 43 days in filing the appeal in this Court as well. CM-11250-CII-2014 has been filed for condonation of 43 days' delay in filing the appeal. Since the appeal has been dismissed on merits, no further orders are required to be passed in the application for condonation of delay in filing the appeal and the same is disposed of as such.

(AJAY KUMAR MITTAL)
JUDGE

May 18, 2017
gbs

(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes