

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

104

FAO-M No.246 of 2017 (O&M)
Date of Decision: October 26th, 2017

Lakhvir Singh

...Appellant

Versus

Mandeep Kaur

...Respondent

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

Present: Ms. Gagan Deep Grewal, Advocate
for the appellant.

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

This is husband's appeal against the order dated 27.07.2017 by virtue of which the Additional Civil Judge (Senior Division), Payal, exercising the powers of District Judge under Hindu Marriage Act, 1955, has allowed application under Order VII Rule 11 CPC filed by the respondent-wife and dismissed the petition under Section 9 of the Hindu Marriage Act filed by the appellant.

Vide impugned order, it has been held that the petition under Section 9 of the Hindu Marriage Act would not be maintainable as the petitioner is seeking relief of restitution of conjugal rights despite a decree of divorce having been granted by Foreign Court and, therefore, the appellant does not have cause of action.

We have considered the order passed by the lower Court in context to provision of Order VII Rule 11 sub-clause (b). A person who does not hold the status of husband under law is not entitled to claim relief under Section 9 of the Hindu Marriage Act for restitution of conjugal rights with a woman whose status as wife has ceased to exist.

Counsel for the appellant has vehemently contended that the appellant-husband has filed a civil suit for declaration to the effect that the

respondent is his legally wedded wife and the decree of divorce dated 23.04.2012 allegedly passed by the Federal Magistrate's Court of Australia is illegal, null and void and not operative on his rights. A copy of the order has been placed on record as Annexure P-1. It has further been urged that an application under Order VII Rule 11 CPC for rejection of plaint had been filed by the respondent-wife but the said application has been dismissed by Civil Judge (Junior Division), Payal, on 25.04.2017.

We have considered the said contention of learned counsel for the appellant and are of the considered opinion that a decree passed by the Foreign Court will remain binding on the parties till it is set aside in accordance with law.

During pendency of the said suit, the appellant does not seem to have a legal right to enforce restitution by filing a petition under Section 9 of the Hindu Marriage Act. The dismissal of application filed by the respondent under order VII Rule 11 CPC in the suit stands on different footing from the impugned order and cannot be relied upon for impugning the order dated 27.07.2017. The appellant does not have any cause of action as on date. It is observed that the right of the appellant to file a fresh petition under Section 9 of the Hindu Marriage Act will not be prejudiced in case he is able to obtain a declaration that the decree dated 23.04.2012 passed by the Federal Magistrate's Court of Australia is a nullity. Safeguarding the said right of the appellant, this appeal is dismissed.

(M.M.S. BEDI)
JUDGE

October 26th, 2017
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No