

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

Date of Decision: 16.08.2018

1. CR No.1026 of 2016(O&M)

Arun Mahajan

..... Petitioner

Versus

Vidhi Mahajan @ Ria Mahajan

.....Respondent

2. CR No.3554 of 2016

Arun Mahajan

..... Petitioner

Versus

Vidhi Mahajan @ Ria Mahajan

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Petitioner in person.

Mr. S.S. Chadha, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, CR No.1026 of 2016 titled Arun Mahajan Vs. Vidhi Mahajan @ Ria Mahajan and CR No.3554 of 2016 titled Arun Mahajan Vs. Vidhi Mahajan @ Ria Mahajan are being decided. Facts are being taken from CR No.1026 of 2016.

[2]. In CR No.1026 of 2016, petitioner has assailed the order dated 19.01.2016 passed by Additional District Judge,

Chandigarh, whereby the application filed by the petitioner for summoning the witnesses was dismissed and in CR No.3554 of 2016, petitioner has assailed the order dated 04.03.2016 passed by Additional District Judge, Chandigarh vide which evidence of the petitioner was closed by order.

[3]. The present revision petitions have arisen out of proceedings of Hindu Marriage Act between the parties. An *ex parte* judgment and decree of divorce was passed on 30.03.2011 by the Additional District Judge, Chandigarh in favour of the petitioner. After the aforesaid decree, the petitioner contracted the second marriage on 16.04.2014.

[4]. Respondent filed an application under Order 9 Rule 13 read with Section 151 CPC for setting aside the *ex parte* judgment and decree dated 30.03.2011 by ascertaining that the decree was fraudulently obtained by the petitioner by giving false address of the respondent intentionally as the respondent and the petitioner were living as husband and wife in the same house i.e. House No.225, Sector-35 C, Chandigarh till 24.05.2014.

[5]. The application filed by the respondent was contested by the petitioner.

[6]. Petitioner filed an application for summoning the following witnesses:-

I) The Officer/Official concerned from Chandigarh Administration Gazette, Chandigarh Govt. Press, U.T. Sector 18, Madhya Marg, Chandigarh along with complete record in name of Shallie Saini w/o Arun Mahajan, d/o Harbans Saini, r/o 225/35A, Chandigarh having changed her name to Shallie Mahajan after marriage pertaining to Gazette notification published on May 1, 2014 Part-II Page 38.

II) The Officer/Official concerned from the Court of Sh. Gursher Singh, PCS, JMJC, Jalandhar along with record of petition in case No.MNT 125/317/2014 and complaint under PWDVA-COMA 291/2014 titled as Vidhi Mahjan Vs. Arun Mahajan which is fixed for 15.01.2016.

III) The Officer/Official concerned from the office of Tehsildar-cum-Registrar of Marriages, Chandigarh Administration, Chandigarh along with record of Marriage Registration Certificate registered under Chandigarh Compulsory Registration of Marriages Rules 2012 which was registered on 20.05.2014 under registration No.1284 of Arun Mahajan and Shallie Mahajan.

IV) The Ward Officer/Official Ward 4(1) concerned Income Tax Official Chandigarh along with complete detail of Income Tax Returns filed by Arun Mahajan r/o House No.225, Sector 35-A, Chandigarh having PAN

No.AHBPM9164F for the financial years 2011-2012, 2012-2013, 2013-2014, 2014-2015.

V) The Nodal Officer, Vodafone,C-130, Phase-VIII, Industrial Area, Mohali along with complete detail regarding the range/radius of a tower installed at house No.227, Sector 35-A, Chandigarh.

VI) The Officer/Official concerned from the record room of Court of Sh. B.K. Mehta, ADJ, Chandigarh along with detail of divorce petition filed by Arun Mahajan having HMA No.79 of 2005 date of decision 24.04.2006 titled as Arun Mahajan Vs. Vidhi Mahajan.

VII) The Officer/Official concerned from the Court of Sh. K.K. Jain, CJSD-cum-Guardian Judge, Chandigarh along with record of petition, rejoinder and cross examination of Vidhi Mahajan in case No.GA32/2014 titled as Vidhi Mahajan Vs. Arun Mahajan which is fixed for 06.01.2016.

VIII) The Officer/Official concerned from the record room of Court of Sh. D.K. Chaudhary, JMJC, Jalandhar along with detail of petition filed by Vidhi Mahajan having No.R.G.9797/07.03.2005 decided on 29.07.2006 titled as Vidhi Mahajan Vs. Arun Mahajan.

IX) The HR Manager/Official concerned from Religare Finvest Ltd., A-3,4,5 Sector 125, Noida, U.P along with detail of attendance of Arun Mahajan for the period January 2011 to March 2011 and date of relieving of Arun Mahajan.

X) The SHO/Official concerned, Sector-36, Chandigarh along with record of DDR of missing person/report of Vidhi Mahajan filed by Smt. Sunita Mahajan w/o Col. M.L. Mahajan, r/o House No.225, Sector 35-A, Chandigarh dated 18.05.2004.

[7]. The said application was contested by the respondent on the premise that the application in question was the third application for summoning the witnesses. On earlier two occasions, the prayer for summoning of 7 witnesses and 9 witnesses respectively were allowed by the Courts and the petitioner has already examined the witnesses. At the fag end of the case, the present application was filed and that too, after concealing the factum of earlier applications and orders passed thereon.

[8]. The Court has also found that earlier applications for summoning the witnesses were allowed by the Courts.

[9]. Petitioner relied upon statement made by the respondent in other case for filing the present application as some disclosure of fact has been made by the respondent therein. In a way, the evidence led in the other case is sought to be relied in the present case for summoning 10 more witnesses.

[10]. Petitioner in person vehemently submitted that by way of summoning the witnesses, petitioner would be in a position to

prove his case with reference to knowledge of the respondent in respect of *ex parte* decree of divorce and separate living of the parties since 2011 onwards.

[11]. Learned counsel for the respondent opposed the prayer on the ground that in the application under Order 9 Rule 13 CPC itself the factum of living of the parties together upto 24.05.2014 was specifically mentioned by the respondent. Thereafter, the petitioner led evidence in the form of 7 witnesses and 9 witnesses on two occasions. Third application is conspicuously silent about the factum of earlier applications which were accepted.

[12]. Learned counsel by referring to HMA No.79 of 2005 stated that earlier petition filed by the petitioner for decree of divorce was got dismissed as withdrawn by the petitioner, though the respondent was *ex parte* therein. The present petition under Section 13(1) (ia) of the Hindu Marriage was filed at the time when the respondent was living with the husband/petitioner. The factum of earlier petition i.e. HMA No.79 of 2005 which was got dismissed as withdrawn was conspicuously concealed in the second petition under Section 13(1) (ia) of the Hindu Marriage Act. The conduct of the petitioner was fraudulent from the very beginning. DDR No.24 dated 19.02.2012 got recorded by the petitioner did not contain

any fact regarding *ex parte* decree of divorce, rather reading of the same would show that the respondent was living in the matrimonial house.

[13]. After passing of the impugned order, dismissing the application for summoning the witnesses, evidence of the petitioner has already been closed vide order dated 04.03.2016 passed by Additional District Judge, Chandigarh against which CR No.3554 of 2016 has been preferred.

[14]. Learned counsel for the respondent further submitted that the petitioner kept on seeking adjournments in the present case by alleging that the evidence of the petitioner has been closed by order of the Court and he intended to file separate petition to challenge the same. Petitioner got CR No.3554 of 2016 to be heard along with CR No.1026 of 2016.

[15]. I have considered the submissions made by learned counsel for the parties.

[16]. Evidently, the petitioner has already examined 7 and 9 witnesses respectively in his earlier attempts. The said fact has been concealed in the present application for summoning the witnesses.

[17]. Perusal of the *zimni* orders dated 11.02.2016, 15.02.2016, 18.03.2016 and 26.05.2016 would show that no

interim order was passed in CR No.1026 of 2016. However the order dated 30.05.2016 was passed in both the revision petitions and interim order was made to continue. CR No.3554 of 2016 was ordered to be heard along with CR No.1026 of 2016. In CR No.3554 of 2016, passing of final order was stayed on 20.05.2016. Thereafter, interim order was made to continue in subsequent order dated 18.07.2016. On 22.08.2016, it was noticed that since the main petition was dismissed for non-prosecution, therefore, interim order was vacated. Thereafter, the case was adjourned for 09.09.2016, 10.01.2017, 23.02.2017 and 22.03.2017.

[18]. On 31.03.2017, petitioner appeared in Court along with children as per order dated 23.02.2017 passed by the High Court. On the basis of proceedings in CRM No.31594 of 2015, the Court stayed the passing of final order by the trial Court. Thereafter, the case was adjourned on number of times. The Co-ordinate Bench vide order dated 16.01.2018, recalled the order dated 31.03.2017, vide which passing of final order by the trial Court was stayed. The application filed by the petitioner i.e. CM No.2817-CII of 2018 in CR No.3554 of 2016 for recalling of the order dated 16.01.2018 was ordered to be taken with the main case.

[19]. The evidence of the petitioner has already been closed.

Petitioner has conspicuously concealed the factum of filing of two earlier applications for summoning the witnesses. The conduct of the petitioner in respect of filing of HMA No.79 dated 21.09.2005 and concealment of the same in filing fresh petition is also attributable to the conduct of the petitioner in not coming to the Court with clean hands. Petitioner seeks to rely upon some evidence adduced in collateral proceedings for staking his claim for summoning the witnesses.

[20]. In my considered opinion, no indulgence can be granted in CR No.1026 of 2016. It is a settled principle of law that a person who has concealed the material facts from the Court does not deserve any such concession. In the light of stand taken by the respondent in the application under Order 9 Rule 13 CPC and the material brought on record, the Court would decide the controversy in accordance with law. There is no error of jurisdiction in the impugned order dated 19.01.2016 passed by Additional District Judge, Chandigarh. CR No.1026 of 2016 is found to be totally devoid of merits and the same is accordingly dismissed.

[21]. Since CR No.1026 of 2016 stands dismissed on merits, therefore, no ground is made out to set aside the impugned order dated 04.03.2016 passed by Additional District Judge, Chandigarh, vide which evidence of the petitioner was closed by

order, therefore, CR No.3554 of 2016 is dismissed accordingly.

August 16, 2018
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No