

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.2779 of 2016

Date of Decision: May 21, 2018

Manju

...Petitioner

Versus

Jasbir Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Surender Dhull, Advocate,
for the petitioner.

Mr.Sanjay Vashisht, Advocate,
for the respondent.

AMIT RAWAL, J.

The present revision is directed against the order dated 3.3.2016, whereby the application submitted by the petitioner-wife under Order 9 Rule 13 CPC for setting-aside the judgment and decree dated 2.4.2009 granting divorce in favour of the respondent-husband, has been dismissed.

Mr.Surender Dhull, learned counsel appearing on behalf of the petitioner submitted that the respondent-husband has filed the divorce petition by giving the address of the petitioner as Manju wife of Jasbir Singh, daughter of Kripal Singh, resident of House No.71, Ground Floor, Indra Prastha Colony, Sector 33, Faridabad. The petitioner was never served by any notice or summons in a proper manner as she had no knowledge about the divorce petition, for, she has been residing with the respondent-husband and she never resided separately, i.e., at parental home. The

address of the applicant-petitioner mentioned was also of her matrimonial home, whereas the address of the respondent-husband as mentioned in the divorce petition was wrong and incorrect. Husband never remained at the given address, i.e., H.No.340, Sector 29, Faridabad, whereas he was alone residing at H.No.71, Ground Floor, Indra Prastha Colony, Sector 33, Faridabad. It is only in February, 2012 when the petitioner was cleaning the almirahs of her matrimonial home, found the copy of the judgment of ex-parte divorce and moved the application on 14.2.2012, therefore, there was no intentional or willful delay in moving the application and the same could not be said to be beyond limitation.

The aforementioned application was contested by the respondent-husband.

The petitioner examined father-in-law Lt.Colonel as AW-1 and herself as AW-2 and brought on record copy of the sale deed Ex.A1 and copy of ration card Ex.A2, whereas the respondent examined three witnesses and brought on record various documents to establish regarding the service of the summons.

The Court, on the basis of the evidence, dismissed the application, which is wholly fallacious, without jurisdiction and suffers from infirmity, for, the father-in-law of the petitioner, i.e., father of the respondent admitted that during all this period, petitioner-wife had remained with the husband and, therefore, she had no knowledge of filing of the divorce petition. The finding of the Court that the petitioner is educated lady and operates her bank account cannot read against the petitioner. The signatures on the summons were of the petitioner, but it had not deciphered whether it was of her and somebody else and, thus, urged this Court for

setting-aside the findings under challenge.

Mr.Sanjay Vashisth, learned counsel representing the respondent-husband submitted that it is not case of an illiterate lady, whereas the petitioner is educated lady and operates her bank account and, therefore, cannot be believed that she could not understand the copy of the summons and the wording written on it by coining the story that she had been living with her husband. No document has been placed on record to prove that after the grant of divorce, she had been living with the husband. Statement of the father-in-law, i.e., father of the respondent cannot be read against the respondent-husband, for, Handwriting and Finger Prints Expert Naresh Kataria compared the signatures of the wife affixed on the record of the Punjab National Bank from the disputed signatures on the summons and gave the opinion that the signatures were of none else but that of the wife, so her plea of non-serving of the summons had rightly been rejected and, thus, urged this Court for dismissal of the revision petition.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the petitioner.

The factum of petitioner being educated has not been denied. Her signatures on the summons and the bank record had been proved through the statement of Handwriting Expert, yet no explanation has come forth for not moving the application within 30 days from the date of the ex-parte judgment and decree dated 2.4.2009.

The application under Order 9 Rule 13 CPC has been filed after the gap of 2 years and 10 months. No explanation has come on record as to how she was not aware of the divorce petition or prevented to file the

application, except that, she had been living with the husband and while cleaning the almirah found the copy of the ex-parte judgment. The aforementioned assertion is not proved through any independent, direct or corroborative evidence. Statement of father-in-law of the petitioner cannot be read against the respondent-husband, for, it is always a dispute amongst the children and the parents owing to the matrimonial discord.

It is a matter of record that the husband has also performed marriage. It is too late in a day to put the clock back allowing the petitioner to contest the divorce petition, for, the application is bereft of any explanation of not approaching the court within limitation prescribed in the Limitation Act, i.e., 30 days from the date of knowledge. The findings arrived at by the trial Court do not call for any interference and cannot be said to be without jurisdiction.

Resultantly, the revision petition stands dismissed.

May 21, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No