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

CR No.3128 of 2018

Date of Decision: 12.07.2018.

Harvinder Singh

... Petitioner

Versus

Kawaljit Kaur

.... Respondent

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Padamkant Dwivedi, Advocate for the petitioner.

B.S.WALIA, J.

1. Challenge in the revision petition is to order Annexure P-11 dated 03.04.2018 whereby the evidence of the petitioner/non-applicant was closed by the learned Addl. District Judge, Gurdaspur in the application under Order 9 Rule 13 CPC filed by the respondent/applicant wife on account of failure of the petitioner/non applicant to conclude evidence despite availing numerous opportunities. Prayer is also for setting aside order Annexure P-12 dated 13.04.2018 passed by the learned Addl. District Judge, Gurdaspur, whereby the application filed by the respondent/applicant wife under Order 9 Rule 13, Code of Civil Procedure (hereinafter referred to as 'the CPC') for setting aside ex-parte judgment and decree Annexure P-2 dated 29.08.2014 was allowed and the case was restored to its original number.

2. A perusal of order Annexure P-11 dated 03.04.2018 reveals that the learned Addl. District Judge, Gurdaspur after taking into account

failure of the petitioner/non-applicant to conclude evidence despite having availed numerous opportunities including last opportunity closed the evidence of the petitioner non applicant by observing that there was no justification to grant further adjournment for permitting the petitioner/non-applicant to lead evidence and adjourned the case to 06.04.2018 for arguments on the application under Order 9 Rule 13 CPC.

3. Learned Counsel contended that order Annexure P-12 had been passed despite there being inordinate delay in moving the same, that the application under Order 9 Rule 13 CPC had been allowed on the ground that he had failed to appear as witness to counter the contents of the application whereas his evidence was closed on 03.04.2018 and order Annexure P-12 was passed on 13.04.2018 without giving him time to challenge order Annexure P-11 dated 03.04.2018. Besides, the factum of second marriage of the petitioner non applicant and birth of a child from said marriage had been ignored by the learned Court below.

4. In compliance of order dated 10.05.2018, the petitioner/non-applicant has produced copies of zimni orders (Annexure P-13, collectively), passed by the learned trial Court. A perusal of the same reveals that the petitioner/non-applicant failed to conclude his evidence despite availing numerous opportunities including last opportunity and ultimately his evidence was closed vide order Annexure P-11 dated 03.04.2018 and case fixed for 06.04.2018 for arguments on the application U/o 9 Rule 13 CPC, on which date, arguments were partly heard and the case adjourned to 10.04.2018 for remaining arguments. On 10.04.2018, the case was further heard and was adjourned to 13.04.2018 for orders, on

which date impugned order Annexure P-12 was passed, whereby the application under Order 9 Rule 13 CPC filed by the respondent/wife was allowed and the case restored to its original position while observing that the petitioner-non applicant had not appeared in the witness box during the pendency of the application to rebut the evidence of the respondent/applicant wife of her being very much present in the matrimonial home and living with the petitioner/non-applicant, when he filed the petition for divorce and that she did not know as to who had appeared on her behalf and filed power of attorney. A perusal of the record further reveals that as per the record, Joginder Singh, father of the petitioner/non-applicant appeared as RW1 and in his cross-examination admitted that the respondent/applicant wife was very much present and living with the petitioner/non applicant in the year 2014. He further admitted that he had disinherited his son i.e. petitioner non applicant and also admitted that he had come to depose in the Court on the asking of the petitioner non applicant. He further deposed that minor child Taranpreet Kaur was born from the wedlock of the parties in the year 2012. In the aforementioned background, the learned Addl. District Judge, Faridkot while taking into account the challenge by the respondent/applicant wife to the exparte judgment and decree dated 29.08.2014 as also of her having appeared in the witness box in support of her plea whereas the petitioner/non-applicant did not bother to appear as witness to rebut the allegations made in the application, allowed the application of the respondent/applicant wife under Order 9 Rule 13 CPC and set aside exparte judgment and decree dated 29.08.2014.

4. Having heard learned counsel for the petitioner non applicant and considering the record, it transpires that after exparte judgment and decree dated 29.08.2014 was passed against the respondent/applicant wife, she learnt about the passing of the exparte judgment and decree only on 11.09.2015, when in a petition under the Domestic Violence Act pending at Sirsa, the petitioner/non-applicant filed written statement mentioning that he had already obtained divorce vide judgment and decree dated 29.08.2014. On the respondent/applicant filing an application under Order 9 Rule 13 CPC and notice having been issued to the petitioner/non-applicant on 16.10.2015 for 23.11.2015 and examination of the respondent/applicant wife's witnesses on 02.02.2016 and cross-examination on 29.02.2016, the petitioner/non applicant filed an application for comparison of signatures of the respondent/applicant wife on 05.04.2016 whereafter the case was adjourned for one reason or the other eventually leading to passing of order dated 13.03.2018 dismissing the application filed by the petitioner/non-applicant for comparison of signatures of the respondent/applicant wife. Thereafter, the case was adjourned to 02.04.2018 for the evidence of the petitioner / non applicant subject to last opportunity. On 02.04.2018, no RW was present and on request the case was adjourned to 03.04.2018 for remaining RWs but even on 03.04.2018 no RW was present, therefore, impugned order dated 03.04.2018 was passed closing the evidence of the petitioner/non-applicant/respondent by Court order. Thus it is evident that ample opportunity was given to the petitioner before closing his evidence by Court order on 03.04.2018 while adjourning the case to 06.04.2018 for

arguments on the application under Order 9 Rule 13 CPC. Eventually order Annexure P-12 dated 13.04.2018 was passed setting aside exparte judgment and decree while taking into account the stand of the respondent/applicant wife that she had never resided at the address given in the title of the petition and that even the report of the process server clearly established that no lady by the name of Kawaljit Kaur was residing in Gali No.8, Guru Nanak Pura, Batala, District Gurdaspur. The respondent/applicant wife also deposed that she had never engaged Shri Deepak Mahajan, Advocate as her counsel nor had she ever put her signatures or thumb impression on the vakalatnama of Shri Deepak Mahajan, Advocate. She further alleged that petitioner/non applicant had himself forged her signatures/thumb impressions on the said vakalatnama and that she was never served in the main case through any mode of service i.e. personal service, munadi, affixation or publication etc. and came to know about the exparte judgment and decree only on 11.09.2015 when in a petition under the Domestic Violence Act pending in the Court of the learned Chief Judicial Magistrate, Sirsa, the petitioner/non-applicant filed written statement mentioning that he had already obtained divorce from the respondent/applicant wife. The petitioner/non-appellant did not appear in the witness-box to rebut the evidence of the respondent/applicant wife. He also did not challenge order Annexure P-11 dated 03.04.2018 nor has any material been brought to my notice that any request was made to defer the hearing of the case to enable the petitioner non applicant to challenge order Annexure P-11 dated 03.04.2018 and merely contested the application under Order 9 Rule 13 CPC. Apparently, the petitioner was resorting only

to dilatory tactics. Besides, none else than the petitioner/non-applicant's father appeared as RW and in his cross-examination admitted that the respondent/applicant wife was very much present in the matrimonial home in the year 2014 and that he had disinherited his son i.e. petitioner/non applicant. In the aforementioned background the order's passed by the learned Addl. District Judge, Faridkot closing the evidence of the petitioner/non applicant as also allowing the application filed by the respondent/applicant wife under Order 9 Rule 13 CPC does not call for any interference especially since the orders were passed after taking into account all aspects of the matter, the petitioner/non applicant not leading evidence despite availing a number of opportunities, his evidence having been closed, petitioner/non applicant's father deposing against the petitioner/non applicant and the petitioner / non applicant not appearing in the witness box to rebut the plea of the respondent/applicant wife who appeared in the witness box in support of her plea.

6. Accordingly, I do not find any infirmity either in order Annexure P-11 dated 03.04.2018 closing the evidence of the petitioner/non-applicant or in order Annexure P-12 dated 13.04.2018, setting aside the exparte judgment and decree dated 29.08.2014. Resultantly, there is no merit in the revision petition. Accordingly, the revision petition is dismissed in limine.

(B.S.WALIA)
JUDGE

12.07.2018

rajesh.k.khurana

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No