

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

C.R.No.695 of 2016

Babli Rani

...Petitioner

Versus

Mohan Singh

....Respondent

Date of Order: 07.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Swati Batra, Advocate for the petitioner.

Mr. Aman Vashishta, Advocate for respondent.

AMIT RAWAL, J (ORAL)

The petitioner is aggrieved of the impugned orders dated 27.11.2013 (P.1) vide which the petitioner-wife was ordered to be proceeded ex parte, 30.5.2014 (P.2) the divorce petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act has been allowed and the order dated 15.12.2015 (P.3) the application of the petitioner-wife filed under Order 9 Rule 13 read with Section 151 CPC has been dismissed.

The facts as emanate from the impugned orders are that the respondent-husband namely Mohan Singh instituted divorce petition bearing No.1118 dated 18.7.2013 against the petitioner by giving following particulars:

*“Babli Rani, aged 33 years wife of Mohan Singh
alias Parveen and daughter of Ram Lubhaya,
resident of Amarpuri B-colony, Yamuna Nagar*

(Haryana).”

In the aforesaid divorce petition, respondent was proceeded ex parte on 27.11.2013 (P.1), resulting into passing of ex parte judgment and decree dated 30.5.2014 (P.2) vide which the divorce petition was allowed. Thereafter, an application under Order 9 Rule 13 CP'C was submitted on 16.9.2014, which has been dismissed.

Learned counsel for the petitioner submitted that actual and correct address as reflected in copy of Adhar Card (P.4) is as under:

“Babli D/o Ram Lubhaya, 17, near ITI, amar puri colony sasoli road, Yamunanagar, Yamuna Nagar.”

He submitted that the said particulars of the home, location and colony mentioned in the aforesaid address were not given in the divorce petition but the court did not record the satisfaction as to whether the service was actually effected or not, for, the service was not effected through registered letter. This fact has totally been ignored by the trial Court while passing the impugned order.

Learned counsel for the respondent submitted that no purpose would be served in setting aside the impugned order, for, the respondent-husband during the pendency of the revision petition, has performed second marriage. The father of the petitioner when appeared in the witness box categorically admitted that the petitioner is living with him for the last two and half years and has been receiving all the letters at the same address. The trial Court has also noted the fact that another sister of the petitioner was also married to the real brother of the respondent and had also matrimonial dispute with him. All these factors weighed in the mind of the court below in allowing the petition.

I have heard learned counsel for the parties and perused the

paper book. On juxtaposition of the address given in the divorce petition and indicated on the Adhar Card, three following things are absent:

“(i) Address (ii) Location and (iii) Colony
House No.17 Near ITI Sasoli road.”

As a matter of fact, it cannot be believed that the respondent did not know about correct address of the petitioner. It appears to be an intentional act for not giving the correct address perhaps he wanted to get rid of his wife in the aforesaid manner. Such an effort is reprehensible.

Without commenting upon the matter, I am of the view that although the parties were given sufficient opportunities to lead evidence but the trial Court did not examine the vital aspects of the matter and was swayed away with the testimony of the father of the petitioner. In my view, gross illegality and perversity has been committed by the court below and thus the impugned orders are not sustainable in the eyes of law.

Accordingly, the present petition is allowed. Petition filed under Order 9 Rule 13 of the Hindu Marriage Act is allowed, ex parte judgment and decree dated 30.5.2014 is set aside and the divorce petition is ordered to be restored.

The petitioner is granted 30 days time to file written statement and the replication, if any, shall be filed within 15 days thereafter.

It is hoped that the trial Court shall expedite the divorce petition as expeditiously as possible, preferably within a period of one year from completing pleadings.

May 07, 2018
manoj

^(AMIT RAWAL)
JUDGE

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