

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.858 of 2016 (O&M)

Date of decision:10.05.2018

Hanish Kumar

... Petitioner

Vs.

Renu Bala

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ritesh Aggarwal, Advocate
for the petitioner.

Mr. Surinder Garg, Advocate
for the respondent.

AMIT RAWAL J.

The present revision petition is directed against the impugned order dated 04.08.2015 (Annexure P-13) passed by the District Judge, Faridkot, allowing the application moved by the respondent seeking recalling/review of the order dated 14.11.2011, whereby the divorce petition filed under Section 13-B of Hindu Marriage Act,1955 (hereinafter referred to as “1955 Act”) by the petitioner in the second motion had been allowed.

Mr. Ritesh Aggarwal, learned counsel for the petitioner submitted that both the parties filed petition under Section 13-B of 1955 Act, on 12.05.2011. Both the parties suffered joint statement on 13.05.2011 before the Court below. The marriage between the parties according to Hindu Rites was performed on 5.9.2004. Out of the wedlock, two sons namely Gaurav Gupta now aged 5 years and Saurav Gupta now aged 3 years

were born and thereafter, the matter was adjourned for six months. After six months, the parties also suffered another joint statement reiterating the previous one. On the basis of aforementioned statement, District Judge, vide judgment and decree dated 14.11.2011 granted the divorce. Respondent/wife-Renu Bala, submitted an application dated 03.01.2012 (Annexure P-5) under Section 114 read with Section 151 of CPC for reviewing/setting aside of the judgment and decree dated 14.11.2011 and for dismissing of the petition under Section 13-B of 1955 Act on the premise that parties lived together as husband and wife upto 6.12.2011. Husband had left wife to her paternal home and both children were kept with him. When he was contacted on telephone on 10.12.2011, then he declared that he had obtained the decree of divorce and was not willing to keep and maintain the respondent/wife. On 12.12.2011, applicant applied for certified copies of decree, aforementioned. The respondent-wife alongwith her father and mother went to Bathinda on 15.12.2011 to the house of petitioner-husband, petitioner returned the gold ornaments weighing 12 tolas to her and got the signatures of wife on the blank stamp papers alongwith signatures of her father. In fact, the husband influenced the wife that decree of divorce was required to obtain a passport showing to be a divorcee person so that he could migrate to Canada and he assured that after settlement in Canada, would again re-marry with her and in this way, fraud had been played upon her, necessitating the wife to move application, aforementioned.

The application was contested by the husband but the trial Court allowed the application, vide impugned order. The impugned order is

not sustainable, for, the Court below has not appreciated the fact that respondent-wife did not place on record any ingredients of fraud having been played upon her, thus, there is miscarriage of justice. The wife suffered a statement on account of her own. It is not a case that the Court had exempted the period of 6 months and granted the divorce decree and listed the matter after six months . Even second motion, wife also suffered a statement. Had the husband influenced her, she could refuse to suffer second statement. Filing of review application is nothing but an arm twisting tactics and act of greed. The compromise arrived at between the parties was in the presence of the parties. It was read out in the presence of the parties. The petitioner never stated that wife was demanding Rs. 5 lacs from him but both husband and wife in a statement repeatedly stated that it was wrong that wife demanded Rs.5 lacs from the husband.

Per contra, Mr.Surinder Garg, learned counsel for the respondent-wife submitted that in support of the review application, wife examined herself as AW1, Prem Kumar Bansal as AW2, Sohan Singh as AW3, Amandeep Singh as AW4 and photocopies of entries in school register Ex.AW4/C and Ex.AW4/D and Harbhajan Singh appeared as AW5 who proved on record copies of ration card Ex.AW5/B and Ex.AW5/C, AW6 Reeta proved the photocopies of indoor register Ex.AW6/B, Ex.AW6/C, Ex.AW6/D and Ex.AW6/E, AW7 Raj Kumar. On the other hand, husband examined himself as RW1 and RW2- Jangir Singh, who proved on record compromise Ex.R1 and endorsements Ex.RW2/B to Ex.RW2/E, entry in the register for sale of stamp paper Ex.RW2/F and RW3

Hanish Kumar, Advocate. He, thus, urged this Court for dismissal of the petition by affirming the order under challenge.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Ritesh Aggarwal, for, the filing of divorce petition dated 12.05.2011 (Annexure P-1), joint statement dated 13.5.2011 (first motion), Annexure P-2 and second statement dated 13.05.2011 and passing of judgment and decree dated 14.11.2011, are not in controversy. The only point to be seen by this Court is whether any cause of action accrued to the respondent-wife for moving an application under Section 114 of CPC. for recalling of the judgment and decree dated 14.11.2011. On plain and simple reading of Section 114 of CPC which is reproduced herein below:-

“Section 114.Review.-Subject as aforesaid, any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed by this Code' or

(c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit”

it is clear that review can be sought when there is error apparent on record.

Assuming instead of respondent-wife, somebody else had impersonated and

suffered a statement, in such circumstances, it would have been apparent fraud which vitiates everything. Definitely in such situation, a cause of action would have arisen to the respondent-wife for moving the application. As per the contents of the application (Annexure P-5), none of the grounds have been able to make out a case falling within the ambit of Section 114 of CPC. For the first time, a plea was taken that the Court at Faridkot had no jurisdiction, for, voter card and ration card of petitioner are of Bathinda. The trial Court while recalling the order did not notice the contents/averments made in para 10 of divorce petition jointly filed by the husband and wife. For the sake of brevity, para 10 reads as under:-

“10. That the petitioners lastly resided and cohabited together as husband and wife as Faridkot, within the jurisdiction of this Hon'ble Court, hence this Hon'ble Court has got the jurisdiction to hear and try the present petition.”

The aforementioned statement was verified and both the parties made the statement. The statement was made before the concerned District Judge, Faridkot and endorsed by the counsel. All these factors, if read in cumulative lead to irresistible conclusion that it was an act of greed or browbeating the husband, much less wriggling out of the statement suffered voluntarily for divorce.

In my view, the respondent-wife has not been able to bring the case within parameters of fraud and coercion etc. Had it been so, evidence to that effect would have been led but in the absence of any direct or cogent evidence, voter card and ration card should not have been taken into

consideration for recalling the order which cannot be a ground for recalling of the order as they do not fall within the expression “mis-representation or fraud”, for, wife was afraid, if there was some truthfulness in the grounds of review, respondent-wife would not have stopped here, she would have definitely initiated the appropriate criminal proceedings, for, she was afraid that she may not be hauled up under Section 182 Cr.P.C.

As an upshot of my findings, order under challenge recalling of judgment and decree dated 14.11.2011, whereby, divorce has been granted is wholly fallacious, perverse, repugnant and not sustainable in the eyes of law and thus, same is set aside.

Resultantly, the revision petition stands allowed.

(AMIT RAWAL)
JUDGE

May 10, 2018
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No