

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

(213)

FAO-M-194-M-2003

Decided on: February 06, 2018.

Parveen

.... Appellant

Versus

Sukhvinder Singh and another

..... Respondents

**CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE GURVINDER SINGH GILL**

Present: None.

M.M.S. BEDI, J (ORAL)

This is an appeal of the year 2003. Neither the appellant is being represented nor the respondent has been served, though the period of 14 years have elapsed. One of the reasons for delay in adjudication of the present appeal is that after 22.07.2004, the file of the case was misplaced by dealing official Smt. Veena along with 32 other cases. Her explanation had been obtained and she was dealt with on administrative side.

Being concerned with the delay in adjudication of the matter, we have taken up the appeal for hearing.

Appellant Parveen had filed a petition under Section 13 of the Hindu Marriage Act for dissolution of the marriage against her husband Sukhvinder Singh impleading one Yadvinder Kaur showing her as wife of respondent No.1. Both the respondents had been proceeded against ex parte before the lower Court as is apparent from the impugned order dated 16.05.2003. As per the order dated 16.05.2003, the evidence of the appellant-wife had been closed by order and her petition was dismissed for want of evidence purported to be under Order 17 Rule 3 CPC.

When the appeal was filed against order dated 16.05.2003 by the wife, notice was issued on the application under Section 5 of the Limitation Act to the respondents in January, 2004 but the respondents could not be served despite repeated efforts. Dasti summons and notice by registered cover were also not served.

Perusal of order dated 20.07.2004 indicates that Process Server had reported that respondent No.1 had refused to accept the notice. On 22.07.2004, the case was adjourned for serving the respondents by substituted service but no application of substituted service was filed till 2017.

Be as that may, the fact remains that the respondents were ex parte before the lower Court when impugned order was passed. They were proforma respondents before this Court. Even otherwise, respondent No.1, contesting respondent had refused to accept the summons as per the report which was available with the Registry.

In view of said circumstances, respondents No.1 deserves to be proceeded against ex parte having not put in appearance despite service.

We have considered the order dated 16.05.2003 which indicate that the petitioner herself had failed to appear as a witness despite having been given repeated opportunities. Her appeal could have been allowed only to the extent that she could be given an opportunity of hearing by giving her time to appear before the lower Court but since in the present matrimonial dispute, the impugned order was passed in the year 2003, and none of the parties have made any attempt to appear before this Court, the appellant has not made any endeavour to appear before this Court despite a notice having been issued to her counsel.

The appeal is disposed of with a direction that the ex parte dismissal of the appeal dated 16.05.2003 will not debar the appellant to claim any relief under the Hindu Marriage Act on the basis of the circumstances after May, 2003.

Dismissal of her petition under Section 13 of the Hindu Marriage Act and this appeal will not tantamount to waiver of the enforceable legal rights as there has not been any observation on merits on the allegations levelled by the appellant in her petition under Section 13 of the Hindu Marriage Act.

The above said order has been passed, in the interest of justice, on account of the peculiar circumstances of this case.

(M.M.S. BEDI)
JUDGE

February 06, 2018.
harsha

(GURVINDER SINGH GILL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No