

209.

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

FAO-M-211-2013 (O&M)

Date of decision:14.05.2018.

Pushpinder Kaur

... Appellant

Versus

Pritpal Singh

.... Respondent

**CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE HARI PAL VERMA**

Present: Mr. R.K. Shukla, Advocate,
for the appellant-wife.

Mr. Vikram Anand, Advocate,
for the respondent-husband.

HARI PAL VERMA, J.

Appellant-Pushpinder Kaur has filed the present appeal against the judgment and decree dated 05.04.2013 passed by the Additional District Judge, Fatehgarh Sahib, whereby the petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act for dissolution of marriage, was allowed and an ex parte decree of divorce was passed, dissolving the marriage between the parties.

As per the divorce petition, marriage between the parties was solemnized on 04.05.2003 by way of Anand Karaj ceremony at Village Sohara, District S.A.S. Nagar Mohali. Two children i.e. a daughter-Arashdeep Kaur and a son-Sukhdeep Singh were born out of the wedlock on 01.02.2004 and 12.12.2005 respectively. The husband had filed a divorce petition on the ground of cruelty and desertion alleging therein that the

appellant-wife is unable to do any household work and to deal with the respondent-husband and other relatives. She is suffering from a mental disorder, for which, she was shown to various doctors, but the disease is incurable. The wife has left the company of the husband without any reasonable cause or excuse since 12.11.2008 and, therefore, the respondent-husband is entitled to get the marriage dissolved on the ground of cruelty and desertion.

The appellant-wife was served in the case before the matrimonial Court, but she did not appear and was accordingly proceeded against ex parte vide order dated 23.01.2013. Thus, on the basis of ex parte evidence of the respondent-husband, learned Additional District Judge, vide order dated 05.04.2013, passed a decree of dissolution of marriage between the parties.

Aggrieved against the aforesaid decree of divorce dated 05.04.2013, appellant-wife has filed the present appeal.

Learned counsel for the appellant-wife has argued that the decree of divorce dated 05.04.2013 has been obtained fraudulently by the husband, by concealing the true and real facts and by projecting a false concocted story. The appellant was never served in the divorce petition pending before the trial Court and as such she has wrongly been proceeded ex parte. The appellant-wife has neither caused cruelty to the husband nor left the society of the husband on 12.11.2008, as alleged. There is no evidence to prove that she was ever treated from Dr. Col. Rajinder Singh, but it is rather the respondent-husband who has treated the appellant-wife with cruelty and, therefore, the husband should not take benefit of his own

wrong. The copy of compromise annexed as Annexure P-2 shows that the appellant-wife was very much in the company of the respondent-husband till 10.10.2012, which falsifies the story of the respondent of desertion. But all these facts have not been considered while passing the ex parte decree of divorce.

On the other hand, learned counsel for the respondent-husband has argued that there is no illegality in the impugned judgment passed by the Court while granting decree of divorce. The appellant-wife was duly served before the trial Court but she opted not to contest the divorce petition. Accordingly, she was proceeded against ex parte vide order dated 23.01.2013 by the trial Court.

We have heard counsel for the parties and perused the record.

On 26.11.2012, the trial Court had passed the following order:-

“Petition U/s 13 of H.M.A. Act received by way of entrustment. Office report seen. Let it be registered. Let notice of the petition be issued upon the respondent for 23.1.2013. RC be filed within three days. Dasti be given as prayed for.”

Thus, the trial Court issued notice of the divorce petition to the appellant-wife for 23.01.2013 and the respondent-husband was required to file registered cover within three days and the dasti notice were ordered to be given as prayed for. The pleaded case of the appellant in the present appeal is that she was never served in the case before the trial Court. Admittedly, the respondent-husband had filed the divorce petition before the District Judge, Fatehgarh Sahib whereas the appellant-wife is residing in Village Sohara, District S.A.S. Nagar Mohali. The perusal of the order dated 26.11.2012 passed by the trial Court shows that apart from filing the

registered cover, the appellant-wife was required to be served by way of dasti process as well. The trial Court has considered that the appellant was served by way of dasti process on 05.12.2012, but that service was never verified by the Chowkidar, rather by the wife of the Chowkidar. But the fact remained that no registered cover was ever filed by the respondent, which creates serious doubts regarding proper service. Except the wife of the Chowkidar, namely, Jasvir Kaur, no other person has witnessed the service. In this manner this Court finds that the dasti process has been misused. Further while not submitting the registered cover as directed by the trial Court vide order dated 26.11.2012, the respondent has not complied with the provisions of Order 5 Rule 21 CPC.

So, once the trial Court has directed the appellant-wife to be served by way of registered cover and the compliance has not been made by the respondent-husband, as the registered cover was not deposited with the trial Court, this Court finds that there is no proper service on the appellant. Even the service through process server is also surrounded by suspicion as the same has been signed by the wife of the Chowkidar and not of the Chowkidar himself.

Since the appellant has not been served in the case, therefore, this Court finds that the appellant deserves a fair trial. Accordingly, the ex parte judgment and decree dated 05.04.2013 is set aside and the matter is remitted back to the trial Court for fresh decision on the case.

However, without expression of any opinion on the merits of the case, the appellant-wife is granted a fair opportunity to contest the petition filed by the respondent-husband seeking divorce on the ground of

cruelty and desertion. The parties are directed to appear before the District Judge, Fatehgarh Sahib on 21.07.2018, on which date, it would be for the District Judge to retain the matter with him; to refer the matter to the Family Court or any other Court of competent jurisdiction.

Since this Court has set aside the ex parte decree, the appellant-wife would be given an opportunity to file a written statement on the next date of hearing before the trial Court.

In view of above, present appeal is allowed on the said terms.

(HARI PAL VERMA)
JUDGE

(M.M.S. BEDI)
JUDGE

14.05.2018
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No