

In the High Court of Punjab and Haryana at Chandigarh.

FAO-5317 of 2016 (O&M)

Date of Decision:- 15.01.2018

Navneet Kaur

.....Appellant

Versus

Devender Singh

.....Respondent

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

Present : Mr. Vaibhav Narang, Advocate, for the appellant.

None for the respondent.

M.M.S.BEDI, J.

1. No one has appeared on behalf of the respondent. Respondent is proceeded against ex parte.
2. The application for condonation of delay of 153 days in filing the appeal, for the reasons mentioned therein, in the interest of justice, is allowed. Delay condoned.
3. This is wife's appeal against judgment and decree dated 4.3.2016 allowing the petition under Section 13 (1) of the Hindu Marriage Act, 1955, filed by the respondent-husband against the appellant-wife, pleading therein that the appellant-wife had treated him with cruelty and that a female child Khushpreet Kaur, born out of the wedlock on 21.9.2013, had died and the appellant started living with her parents after death of the child. The divorce has been granted on the basis of ex parte evidence of the respondent who appeared as PW-1 and

furnished his affidavit as Ex.PW-1/A. Ex parte decree was passed against the appellant on 4.3.2016 after she was proceeded against ex parte on 16.12.2015.

4. Record has been received.
5. Counsel for the appellant has submitted that the appellant had actually engaged Mr. Maninder Singh as an Advocate who had advised the appellant to file a petition for transfer in the High Court.
6. Counsel for the appellant has submitted that the ex parte order was passed on 16.12.2015 which culminated in ex parte decree on 4.3.2016, of divorce without applying the judicial mind on the facts and circumstances of the case. The patent illegality has been pointed out that it is wrongly pleaded in the petition that the daughter born out of the wedlock had expired whereas the appellant along with the minor female Khushpreet Kaur is present in the Court.
7. Without expression of any opinion on merits of the case, we are of the considered opinion that the appellant had been proceeded against ex parte vide order dated 16.12.2015. She had one month period to get the ex parte proceedings set aside as per the provisions of Order 9 Rule 12 CPC. On asking of the Court, the explanation for non-appearance has been given by the counsel to the effect that Mr. Maninder Singh, Advocate had been engaged by the appellant who had assured that the case will be got transferred from Ambala to Panchkula by moving a transfer application. The transfer application was filed before 4.3.2016. It has been submitted that it was assured that the appellant will be represented through a counsel in Ambala Court to contest the divorce petition. A reference has been made to a complaint filed before the Bar Council against the counsel concerned which is stated to be pending.

8. Despite service, the respondent refused to appear in this case, as such, the case was adjourned on 22.11.2017 to 15.1.2018 in order to give him a fair opportunity to appear and contest the appeal. He has opted not to appear before this Court, therefore, this Court is left with no other alternative except to adjudicate the appeal on merits as the respondent-husband has neither come forward to pay litigation expenses of ₹20,000/- nor opted to file any reply to the application under Section 24 of the Hindu Marriage Act.
9. We have considered all the circumstances and are of the opinion that the appellant had been deprived of a fair opportunity to appear before the lower Court and contest the petition. The lower Court appears to have acted hurriedly without giving an opportunity to the appellant to appear before the Court or to seek for setting aside the ex parte order which has culminated into the ex parte decree. It will be fair in the interest of natural justice to give a fair opportunity to the appellant to contest the petition filed by the respondent-husband on the basis of apparently wrong facts. The appellant can not be made to suffer for fault of an Advocate. The observation regarding fault of Advocate is meant for this appeal only. The appeal is allowed. The order dated 16.12.2015 proceeding ex parte against the appellant and the judgment and decree of divorce passed ex parte on 4.3.2016 are hereby set aside by reverting the clock to the proceedings as on that day.
10. The appellant will appear before the Family Court, Ambala on or before 7.4.2018 and file written statement. The said Court shall issue notice to the appellant for appearance, for decision of the application under Section 13 of Hindu Marriage Act filed by the respondent in accordance with law.

11. We observe that the respondent has intentionally evaded appearance before this Court. If any such evasive approach is adopted by the appellant to appear before the lower Court, it will be open to the lower Court to proceed in accordance with law against the husband-respondent in his divorce petition.

(M.M.S. BEDI)
JUDGE

(GURVINDER SINGH GILL)
JUDGE

January 15, 2018

mohan

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