

In the High Court of Punjab and Haryana at Chandigarh

FAO-M-377 of 2015 (O&M)

Date of decision: April 23, 2018

Renu Bala @ Sweety

.....Appellant

Versus

Joginder Pal

....Respondent

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

Present : Mr. R.S.Chauhan, Advocate for the appellant

Mr. K.S.Kahlon, Advocate for the respondent.

GURVINDER SINGH GILL, J.

1. The appellant-wife has filed this appeal challenging judgment and decree dated 2.3.2015, whereby a petition filed by respondent-husband Joginder Pal under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as "*the Act*") has been accepted and an *ex-parte* decree of divorce dissolving marriage of the parties has been passed.
2. The respondent-husband, in his petition, under Section 13 of the Act averred that he was married to the appellant on 8.3.2007 and they cohabited as husband and wife at Village Gandhian, Tehsil and District Gurdaspur and a son was born out of the wedlock. However, ever since the inception of marriage, the behaviour of appellant was rude and cruel and she would insult and often leave the matrimonial home without informing the respondent. The respondent further asserted that the appellant left his company and had

deserted him w.e.f. 14.7.2010 without any justifiable cause. The respondent, thus, sought dissolution of his marriage on grounds of cruelty and desertion. Notice of the petition was issued to the appellant. However, since the appellant could not be served by ordinary means, she was ordered to be served by means of publication in the newspaper 'The Tribune' vide order dated 28.5.2014. The publication having been effected and none having put in appearance on behalf of the appellant, the appellant was ordered to be proceeded against *ex-parte* vide order dated 19.1.2015. *Ex-parte* evidence was recorded and on the basis of *ex-parte* evidence, the petition was decreed *ex-parte* vide judgment and decree dated 2.3.2015.

3. The appeal was filed after a delay of 103 days wherein the appellant stated that she came to know about the *ex-parte* decree on 5.8.2015 when she had appeared in connection with criminal case before the Magistrate where the respondent disclosed about the decree of divorce. The delay having been condoned, the appeal was entertained. Notice of the same was issued to the respondent, who is duly represented by a counsel.
4. The learned counsel for the appellant, while assailing the impugned judgment, has submitted that the respondent had intentionally and cleverly mentioned an incorrect address of the appellant in his petition under Section 13 of the Act so as to ensure that the appellant was not served in person and he is able to get an *ex-parte* decree of divorce. The learned counsel for the appellant has submitted that in the petition under Section 13 of the Act, the respondent mentioned the alternative address of the appellant as House No. 577, New Shastri Nagar, Pathankot whereas the correct address of the

appellant is H.No.146/536, Ward No.29, New Shastri Nagar, Pathankot.

5. On the other hand, the learned counsel for the respondent has submitted that there was a typographical error in the petition as regards the mention of address and when the said error had come to the notice of respondent, summons had in fact been sent at the correct address i.e. at H.No.536, Ward No.29, New Shastri Nagar, Pathankot but the appellant had intentionally been evading service in order to harass the respondent. The learned counsel for the respondent has further submitted that in any case the publication having been effected in a reputed newspaper i.e. "The Tribune" which had a wide circulation in north India, the appellant cannot feign ignorance about the pendency of the proceedings under Section 13 of the Act and she has to be treated to have been duly served and she having intentionally chosen not to appear and contest the petition, the learned lower Court was perfectly justified in proceeding *ex-parte* against the respondent.
6. We have considered the rival submissions addressed before this Court and have also perused the record of the case.
7. A perusal of memo of parties before lower Court as well as in the impugned judgment shows that the address of the appellant is mentioned as follows:-

"Renu Bala @ Sweety Wife of Sh. Joginder Pal, Daughter of Sh. Om Parkash, resident of Village Kothi Prem Singh, Tehsil and District Pathankot.

Alternative Address:-

Renu Bala @ Sweety Wife of Sh. Joginder Pal, Daughter of Sh. Om Parkash, C/O S.K.Saini,(BSNL Employee), House

No.0577, New Shastri Nagar, Pathankot, Tehsil and District Pathankot.”

8. The learned counsel for the appellant, in order to further hammer forth his aforesaid submission regarding incorrect address, has referred to copy of Aadhar Card annexed with the appeal wherein the address of the appellant and of her minor son is mentioned as H.No.146/536, Ward No. 29, New Shastri Nagar, Post Office Pathankot, Tehsil Pathankot, Punjab. In any case, the said fact that the address having been incorrectly mentioned in the petition is not disputed by the learned counsel for the respondent.
9. No doubt, the Courts are competent to proceed against the party who intentionally evades service or chooses not to appear despite having been served but the Courts should not casually form this opinion of “evasion of service” especially in matrimonial matters, more particularly in matters pertaining to dissolution of marriage, as marriage, in our society, is a sacrament and a lifetime bond, which is not easily severed. The entire course of a person's life changes after dissolution of marriage and if any decision is passed on some incorrect order of proceeding *ex-parte*, more often than not, the same would cause irreversible damage. The Courts are expected to be extremely vigilant before ordering to proceed *ex-parte* against any of the parties in such delicate matters. Courts should make an endeavour that the parties in matrimonial cases should get fair chance of contesting the rival claims.
10. In the present case, the record does not indicate that at any stage, the respondent had chosen to make correction in the address of the appellant in

the array of parties before learned lower Court. The petition as well as judgment reflect that incorrect address of the appellant-wife is mentioned therein. In these circumstances, service by substituted means of publication in a newspaper in the present case is merely a camouflage created by the respondent to hoodwink the process of law and rules of natural justice.

11. Bearing the aforesaid factual position in mind, in our opinion, the order for proceeding to serve the appellant by means of publication and thereafter to proceed *ex-parte* against the appellant cannot be upheld. Accordingly, the impugned *ex-parte* judgment and decree cannot sustain. The appeal accordingly merits acceptance and is hereby accepted. The impugned judgment and decree are hereby set aside. The order proceeding the appellant *ex-parte* on 19.1.2015 having been set at naught, the parties are directed to appear before the District Judge, Pathankot on 19.5.2018 on which date the appellant-wife would be entitled to file written statement to the petition under Section 13 of the Act filed by Joginder Pal and the Court shall proceed further with the case in accordance with law. It will be open to the District Judge, Pathankot to entrust the proceedings to the Family Court or any other Court of competent jurisdiction in the area.

12. Decree sheet be prepared. Parties are left to bear their own costs.

(M.M.S. Bedi)
Judge

(Gurvinder Singh Gill)
Judge

April 23, 2018

kamal

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No