

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-M-194-2016 (O&M)
Date of Decision:- 26.2.2018

Raj @ Raje Masih

... Appellant

Versus

Kuldeep Singh

... Respondent

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

Present:- Mr. Randeep Singh, Advocate for
Mr. Vipin Mahajan, Advocate for the appellant.

None for the respondent.

M.M.S. BEDI, J.

The respondent-husband had obtained an *ex parte* decree vide judgment dated 13.11.2014 under Section 27 (2)(ii) of the Special Marriage Act, 1954 on the ground that there has not been any restitution of conjugal rights between the parties for a period of more than one year after passing of a decree of restitution of conjugal rights dated 4.12.2012, decided *ex-parte* against the appellant-wife. The appellant-wife has challenged the abovesaid order *inter alia* on the ground that she had been wrongly proceeded against *ex parte* and that she did not have any knowledge about the earlier decree for restitution of conjugal rights dated 4.12.2012, which too was *ex parte*.

Without adverting to the merits of the case, we are of the opinion that the grant of relief of dissolution of marriage to the respondent-husband under Section 27(2)(ii) of the Special Marriage Act, 1954 for non-compliance of an *ex-parte* decree is apparently violative of rules. The decree of divorce has been passed and the marriage has been dissolved on account

of default of the appellant-wife for not following the mandate of ex-parte decree of restitution of conjugal rights dated 4.12.2012. The respondent-husband appears to have adopted a clever device to misuse the statutory provisions of law without making an attempt to execute the decree for restitution of conjugal rights. Intention of the respondent-husband appears to be *mala fide*. The order dated 13.11.2014 is apparently a device to abuse the process of the law i.e. seeking divorce for non-implementation of decree of restitution of conjugal rights, which decree has been obtained ex-parte. The lower Court seems to have been persuaded by the fact that the respondent had made efforts to send copy of the decree dated 4.12.2012. It is neither the pleading of the respondent nor the case of the respondent that he ever made any effort for executing the ex-parte decree, in accordance with law. The conduct of the respondent is also not above board to grant him a decree of divorce on account of the alleged default of the appellant. The matrimonial bond between the parties has been illegally severed on the basis of an attribution of non-compliance of the decree regarding which the appellant-wife did not have the knowledge. On account of abovesaid circumstances, the ex parte decree of dissolution of marriage dated 13.11.2014 is liable to be set aside.

The appellant-wife has been proceeded ex parte on account of her failure to appear before the Court to contest the petition despite service through publication. The ex parte proceedings against the appellant-wife, which had ultimately culminated into the decree of divorce on 13.11.2014 is also liable to be set aside.

It is not out of place to mention here that the appeal has been preferred after a delay of 428 days regarding which an application under

Section 5 of the Limitation Act has been filed. The ex parte decree of annulment of marriage came to the knowledge of the appellant-wife on 19.5.2015. As the appellant-wife claims to be a poor person and had to arrange money for filing the appeal, there are sufficient reasons for condoning the delay of 428 days. Ordered accordingly.

The appeal is allowed.

The judgment and decree dated 13.11.2014 are hereby set aside. The lower Court is directed to take up the proceedings with effect from the date when the appellant-wife was proceeded against ex-parte after publication. The appellant-wife shall appear before the lower Court (i.e. the Successor Court of the Additional District Judge, Jalandhar) who had allowed the petition under Section 27(2)(ii) of the Special Marriage Act, 1954, on 17.3.2018. In case no one puts in appearance on behalf of the respondent-husband Kuldeep Singh on said date, the Court shall make earnest endeavour to seek his presence by issuing notice to his counsel. The appellant-wife is directed to file her written statement on appearance before the lower Court. As the ex-parte proceedings against her have been set aside by this Court, the order dated 22.10.2014 proceeding ex-parte against the appellant-wife is hereby set aside being illegal, in the exercise of powers under Order 43 Rule 1-A CPC as the said illegal order had ultimately culminated into an ex parte decree on 13.11.2014.

(M.M.S. Bedi)
Judge

26.2.2018

pankaj

Whether speaking /reasoned

Whether Reportable

Yes / No

Yes / No

(Gurvinder Singh Gill)
Judge