

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

222

FAO-7308-2017(O&M)

Date of Decision: 04.07.2018

HARJIT @ HARJEET KAUR GILL

....Appellant.

Versus

SUKH PREET SINGH

...Respondent.

CORAM:- HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Appellant-wife in person with
Mr. Nishan Singh Chahal, Advocate

Respondent-husband in person with
Mr. D.S. Brar, Advocate.

ANUPINDER SINGH GREWAL, J.

This appeal is directed against the order of the Family Court, Faridkot dated 29.08.2016 whereby, the petition of the respondent-husband under Section 9 of the Hindu Marriage Act for restitution of conjugal rights, has been allowed exparte.

2. The marriage of the appellant-wife was solemnized with the respondent on 03.12.2007. Out of the wedlock, a child namely Avneet Kaur was born, who is stated to be living with the appellant in Canada.

3. Learned counsel for the appellant has contended that the appellant was a citizen of Canada at the time of her marriage and marriage was solemnized because the respondent wanted to settle in Canada. When he got permanent residency from Canadian Government,

he started quarreling with the appellant as he wanted to marry another Indian girl. The respondent had been residing with the appellant for over 08 years. However, he later came to India and did not return back to Canada despite the requests of the appellant-wife. He has also contended that the decree had been passed by the Family Court exparte without service having been effected on the appellant. The address, which was furnished by the respondent i.e. 2 Griffith Court Brampton, Toronto (Canada)-L7A3T6 is a house, which belongs to both the appellant and the respondent and when the respondent was in Canada they along with the child were residing thereat. However, after the respondent returned to India and at the time when the petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights was preferred by the respondent, the appellant was not residing thereat. She had been residing at 140 EARLSBRIDGE BL VD : BRAMPTON, ON L7A 3S7. She along with her daughter was residing at her parental home in Canada and this fact was well known to the respondent. He had deliberately not mentioned this address at which she was residing. He also contends that the appellant is ready and willing to reside with the respondent as agreed to by the parties at the time of the marriage. Their daughter is residing at Canada and the appellant is doing three part time jobs at Canada and would be willing to come to India for a period of one month and the respondent is free to come and reside with her at Canada, both in the interest of their marriage and the welfare of the child.

4. Learned counsel for the respondent has contended that the respondent had made every effort to enable the parties to resume their conjugal life but the appellant did not pay any heed and therefore, the decree of the Family Court is, in accordance with law, and the appeal

merits dismissal. He also contended that as the appellant was in fact, residing at the address mentioned in the petition and despite issuance of notice, she had chosen not to appear before the Family Court, she had rightly been proceeded exparte.

5. With the consent of the learned counsel for the parties, we are taking up appeal itself for final disposal.

6. We had made an endeavour to hear out the parties and to explore the possibility of amicable settlement. The appellant has expressed her willingness to resume her conjugal life and stay with the respondent. She has stated that she is having three part time jobs in Canada and at present, it is difficult for her to come to India for a period of more than one month. She is willing to come to India for a period of one month and stay with the respondent and send her daughter to stay with the respondent for entire duration of vacation of 02 months. The respondent has, however, expressed his unwillingness to go to Canada as he has to look after his mother, who is 60 years of age as one of his brothers had unfortunately expired. He says that he wants the appellant to come and stay with him at his home in the village.

7. Learned counsel for the appellant has furnished certified copies of the zimni orders passed by the Family Court. A perusal of order dated 04.04.2016 indicates that notice was issued to the respondent through registered cover for 21.05.2016. On 21.05.2016, the Family Court has proceeded exparte against the respondent (appellant herein) by recording that as per office report, summons sent to the respondent through Registered A.D. cover on 08.04.2016 have not been received

back and more than one month has elapsed, therefore, respondent (appellant herein) is deemed to have been served.

8. In the aforementioned facts and circumstances of the case, especially as it pertains to restitution of conjugal rights and the appellant has expressed her willingness to stay with the respondent, we are of the considered view that adequate opportunity should have been granted to the appellant-wife to present her case before the Family Court. The principles of natural justice require that before any order is passed against a person, who would be adversely affected therefrom, he/she should be given reasonable opportunity of being heard. Nobody should be condemned unheard and proceedings ought not to be conducted behind the backs of those who are visited with adverse consequences. It is also the case of the appellant that the address, which was furnished by the respondent, was not the one at which she was residing at the time when the notice through registered A.D. was issued.

9. Therefore, we have no hesitation to hold that the appellant-wife has not been given fair opportunity to participate in the petition under Section 9 of the Hindu Marriage Act and she has been proceeded against *exparte* without confirming as to whether she was actually a resident of 2 Griffith Court Brampton, Toronto (Canada)-L7A3T6. The impugned judgment has been passed in undue haste purportedly on the un rebutted evidence led by respondent.

10. Consequently, we set aside the impugned judgment and decree of the Family Court, Faridkot dated 29.08.2016 and the case is remanded to the Family Court for fresh decision after hearing the parties. The parties are directed to appear before the Family Court, Faridkot. However, nothing whatsoever, which has been observed

herein, shall be construed to be an expression on the merits of the case.

The parties are directed to appear before the Family Court, Faridkot on 15.09.2018. The Family Court shall make an endeavour towards an amicable settlement for reunion of the parties as there does not appear to be a serious contest on behalf of the appellant to rejoin the company of the respondent-husband. The appellant-wife may appear before the Family Court either in person or through her counsel or through her authorized agent to contest the petition on merits.

(M.M.S. BEDI)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

04.07.2018
SwarnjitS

Whether speaking/reasoned :	YES/NO
Whether reportable :	YES/NO