

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

FAO No.5849 of 2018 (O&M)

Date of decision: 26.10.2018

Gurpal Singh Laddi

... Appellant

Versus

Suman

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. PKS Phoolka, Advocate
for the appellant.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against order dated 05.02.2016 passed by the Civil Judge (Jr. Div.), Bathinda whereby application under Order 9 Rule 13 read with Section 151 CPC for setting aside ex parte order dated 27.11.2012 and ex parte judgment and decree dated 23.10.2013 has been dismissed.

The respondent filed petition under Section 9 of the Hindu Marriage Act, 1955 on 18.09.2012 in which the applicant/appellant was proceeded against ex parte vide order dated 27.11.2012 and the proceedings eventually culminated in ex parte judgment and decree dated 23.10.2013. The instant application for setting aside ex parte order as well as judgment and decree dated 23.10.2013 was filed on 24.03.2014. A copy of the application has been placed on record as Annexure P7.

Counsel for the applicant/appellant would urge that the applicant was not duly served in the case and he denied his purported signatures on the summons issued by the Court on the basis whereof ex parte proceedings were initiated against him. It is further argued that a serious prejudice shall be caused to the applicant in case ex parte decree for restitution of conjugal right remains intact as no marriage was performed between the applicant and respondent, thus, the question of resuming cohabitation with the respondent does not arise. In addition, it is argued that even if there was some delay in filing the application under Order 9 Rule 13 CPC from the date of knowledge of ex parte judgment and decree on 26.01.2014, the same should not be allowed to stand in the way of applicant as substantial justice cannot be pitted against technical considerations. The last submission made by counsel is that the applicant is ready to compensate the respondent for delay in filing the application, therefore, no prejudice shall be caused to the respondent in case the ex parte proceedings/judgment and decree are set aside and the matter is remitted to the trial Court for decision of petition for restitution of conjugal rights on merits after providing an opportunity to contest the case, by the applicant.

I have heard counsel for the appellant, perused the paper book, particularly various annexures appended with the appeal.

Apart from the fact that there is inordinate delay of 450 days in filing and 318 days in re-filing the appeal, the same sans merit and liable to

be dismissed.

The plea of appellant is that he was not duly served in the case, therefore, could not contest the proceedings. Gurpal Singh tendered into evidence his affidavit by way of examination in chief and reiterated his version set up in the application. In his cross examination, he has deposed to the following effect:-

“I cannot identify my signatures on mark DB the summons dated 17.11.2012 issued by the Court of Worthy Sh. Harjit Singh, PCS ACJ (SRDV), Bathinda in case titled Suman Vs. Gurpal Singh in a petition under Section 9 of HMA. Copy of the summons is mark DA. Violated (sic) these are not my signatures and these summons are of 19.11.2012.”

The very fact that the appellant initially refused to identify if the signatures on mark DB are of the applicant or otherwise, it creates a doubt in his version that the summons issued by the Court on which a report was made by serving official of the Court in discharge of his official functions did not bear signatures of the applicant/appellant. Assuming that the summons issued by the Court have not been signed by the applicant but perusal of sub para ii of para 2 of the application makes it evident that the applicant knew about pendency of the petition but did not opt to contest the proceedings.

A relevant extract from sub para ii of para 2 of the application, reads as follows:-

“... they why she filed the petition and harassing him, then the petitioner assured and promised the respondent that like the

previous petition she will withdraw the present petition, so the petitioner did not appear, and the Hon'ble Court passed the ex parte order against the respondent.”

The applicant has not specifically averred as to the date on which he came to know about pendency of the petition qua which he approached the respondent and she assured to withdraw the same. The applicant has failed to substantiate allegations raised in sub para ii para 2 in order to justify his absence from the proceedings despite having gained knowledge of pendency of the case in the Court. In this view of the matter, it can safely be held that the applicant very well knew about pendency of the petition before the Court but for the reasons best known did not contest the proceedings.

Indisputably, as per plea of the applicant/appellant, he came to know of passing of ex parte judgment and decree on 26.01.2014 when he received summons from Mahila Wing, Bathinda. The application for setting aside ex parte judgment and decree was filed on 24.03.2014 i.e. after more than 30 days from the date of knowledge of ex parte judgment and decree, therefore, the Court has rightly held that the same is barred by limitation. Admittedly, the appellant did not file an application seeking condonation of delay nor made any such request in the application Annexure A7. This apart, conduct of the applicant/appellant is not bonafide who even could deny his having received summons from the Mahila Wing, Bathinda on the basis whereof he purportedly came to know about the ex parte judgment and decree. In his cross examination, he changed his stance and would state

that he did not receive any summons from Women Cell but only received information telephonically. Taking a cumulative view of the facts and circumstances discussed hereinbefore, it can safely be held that the applicant/appellant has not approached the Court with clean hands when otherwise his claim for setting aside ex parte judgment and decree is clearly barred by limitation.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

26.10.2018
ashok

(REKHA MITTAL)
JUDGE

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