

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-M-157 of 2018
Date of decision: 11.05.2018

Malkiat Singh

...Appellant

Vs.

Sarabjit Kaur

...Respondent

CORAM:HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Rajbir Singh, Advocate for the appellant.

M.M.S. BEDI, J.(ORAL)

This is an appeal filed by appellant-husband against the *ex parte* decree of divorce granted to the respondent-wife. As per the impugned order it is mentioned in para 4 that after awarding of maintenance expenses, the appellant started not appearing and was proceeded against *ex parte* after framing of issues. It appears that the appellant has not paid any amount towards interim maintenance.

Be that as it may, while filing the appeal before this Hon'ble Court, no reason has been given as to why *ex parte* order passed against the appellant-husband which ultimately culminated into *ex parte* decree, had not been challenged. No doubt, the appellant has got both the remedies available to him i.e. either to file appeal or to approach the same Court by filing application under Order 9 Rule 13 CPC. Appellant without explaining the circumstances for non-appearance before the lower Court, has approached this Court in appeal on merits.

We have gone through the circumstances of the case and are of the view that the judicial propriety demands that the appellant should first

file an application under Order 9 Rule 13 CPC for setting aside the *ex parte* proceedings before the trial Court explaining circumstances for absents himself before the lower Court.

The appeal is accordingly dismissed, without expression of any opinion on merits, or on the reasons for non appearance of the appellant before the lower Court, with a liberty to the appellant to file an application under Order 9 Rule 13 CPC, within 30 days from today. In case any such application is filed within the aforesaid time the same shall be entertained. Appellant will be entitled to the benefit of Section 14 of the Limitation Act and his application will not be dismissed on the ground of limitation. The right of the respondent-wife to claim maintenance/interim maintenance, will also not be prejudiced.

(M.M.S. BEDI)
JUDGE

(HARI PAL VERMA)
JUDGE

May 11, 2018
Poonam(II)

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No