

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-M-41-2018 (O&M)
Date of Decision:- 14.3.2018

Rajiv Kumar

... Appellant

Versus

Payal Rani

... Respondent

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

Present:- None.

M.M.S. BEDI, J.

The respondent-wife has been granted ex-parte decree of divorce vide judgment and decree dated 6.11.2017.

A perusal of the aforesaid judgment indicates that the appellant-husband had appeared through his counsel before the lower Court but thereafter opted to absent himself, as such he was proceeded against ex-parte with effect from 26.10.2017. The ex-parte order dated 26.10.2017 ultimately culminated into an ex-parte decree of divorce dated 6.11.2017.

We have gone through the grounds of appeal filed by the appellant-husband. Not even a single word has been mentioned regarding the reason for non-appearance before the lower Court or to challenge the order of ex-parte proceedings dated 26.10.2017 by furnishing any explanation. The scope of present appeal would be to determine, whether the appellant-husband had been wrongly proceeded against ex-parte or that the ex-parte proceedings and to consider whether there are sufficient

grounds for setting aside the ex-parte decree, on merits.

The Court of first appeal being a Court of fact and law, it will not be appropriate for this Court to consider the merits on the basis of ex-parte evidence without considering the validity of order dated 26.10.2017 proceeding the appellant-husband against ex-parte and the order dated 6.11.2017, which is the final result of the ex-parte proceedings.

Counsel for the appellant-husband was directed to apprise this Court of the fact whether any application under Order 9 Rule 13 CPC had been filed by the appellant-husband before the District Judge, Ferozepur. No one has put in appearance on behalf of the appellant-husband today to supply the information sought for by this Court. No doubt two remedies are open to a person against whom an ex-parte decree is passed i.e. either to seek the setting aside of ex-parte decree under Order 9 Rule 13 CPC or to file a statutory appeal provided under law.

Since, the validity of ex-parte proceeding has not been challenged, it will not be appropriate for this Court to consider the merits of the appeal. The judicial propriety, in such circumstances, would require that the appellant-husband should approach the same Court under Order 9 Rule 13 CPC for setting aside ex-parte order and ex-parte decree and seek adjudication of the petition for divorce filed by the respondent-wife on merits, subject to satisfying the Court that the ex-parte decree is not appropriate under the law.

In view of the abovesaid circumstances, we dismissed this appeal with liberty to the appellant-husband for approaching the lower Court under Order 9 Rule 13 CPC.

Prima facie we are of the opinion that the appellant-husband has intentionally opted not to contest the divorce petition filed by the respondent-wife before the lower Court in order to evade the statutory beneficial provision for the wife for maintenance under Section 24 of the Hindu Marriage Act, 1955 and has, with an oblique motive, to harass the respondent-wife to approach this Court without challenging the order of proceeding against him ex-parte, which culminated in to ex-parte decree of divorce dated 6.11.2017.

Disposal of this appeal will not in any manner affect the adjudication of application under Order 9 Rule 13 CPC, in accordance with law. It is ordered that in case application under Order 9 Rule 13 CPC is filed within a period of one month, the same shall be entertained by the lower Court.

(M.M.S. Bedi)
Judge

14.3.2018
pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No