

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA-5618-2016 (O&M)
Date of Decision: 20.09.2018

Sukhwant Kaur

--Appellant

Versus

Amarjit Singh

--Respondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Abhinav Gupta, Advocate for the appellant.

TEJINDER SINGH DHINDSA.J (Oral)

CM-14715-C-2016

Instant application has been filed under Section 5 of the Limitation Act seeking condonation of delay of 18 days that has occurred in filing the instant appeal.

In view of the averments made in the application, sufficient cause has been shown to condone the delay of 18 days that has occurred in filing the present appeal.

Accordingly, prayer made in the application is allowed.

Delay is condoned.

Main Appeal

Plaintiff-appellant Sukhwant Kaur is in second appeal before this Court having remained unsuccessful in both the courts below.

Briefly, it may be noticed that plaintiff-appellant filed a suit for declaration to the effect that she is the legally wedded wife of defendant Amarjit Singh as per *Chadar Andazi* performed on 10.3.1999 in the presence of Shri Guru Granth Sahib. Mandatory injunction was also sought directing defendant Amarjit Singh to get the marriage registered before the competent authority at Jalandhar. It was averred that plaintiff/appellant was

earlier married to Surjeet Singh on 14.5.1988 and from such wedlock one son was born on 15.7.1989. On account of certain temperamental differences such marriage could not sustain and as such, Panchayati Divorce was obtained. Thereafter, plaintiff remarried with defendant Amarjit Singh on 10.3.1999. It was asserted that defendant Amarjit Singh was a widower at the time of the second marriage and had earlier been married to one Harjinder Kaur. Plaintiff asserted in the suit that she wants to get the marriage registered as she wants to prepare a Passport. However, the Passport authorities are declining to issue Passport on the ground that she has not attached the Marriage Certificate with the application and that she had not obtained divorce from her first husband.

Suit was contested by defendant Amarjit Singh. Even though, on merits, he admitted the matrimonial alliance with the plaintiff, yet, he opposed the prayer on the ground that the plaintiff wants to desert him after obtaining a Passport and wants to settle abroad with her son from the previous wedlock.

Suit filed by the plaintiff was dismissed by the Trial Court on 27.11.2014 and a civil appeal having been preferred has met the same fate vide judgement dated 22.3.2016 passed by the learned Additional District Judge, Jalandhar.

Counsel for the appellant has argued that since defendant/respondent had admitted as regards the factum of marriage, then the suit seeking declaration as being the legally wedded wife could not have been dismissed.

Having heard counsel for the appellant and perused the pleadings on record, this Court is of the considered view that there is no

merit in the instant appeal. It is a case where the plaintiff-appellant is claiming to have obtained a Panchayati Divorce from her first husband namely Surjeet Singh. However, the copy or any material in support of such Panchayati Divorce was never produced on the judicial file. It has also gone uncontroverted that the plaintiff-appellant had obtained a legal divorce from her previous husband Surjeet Singh vide Ex. D-2. The petition filed by her under Section 13 of Hindu Marriage Act was duly proved on record as Ex. D-1. In para 8 of the Divorce Petition Ex. D-1, plaintiff-appellant had clearly stated that her husband Surjeet Singh had deserted her on 13.4.2001. This clearly falsifies her stand of having obtained a Panchayati Divorce from Surjeet Singh prior to her remarriage with defendant/respondent on 10.3.1999. What clearly emerges is that on 10.3.1999 when the plaintiff-appellant entered into an alliance with the defendant/respondent she had a living spouse and as such, could not have performed a second marriage with Amarjit Singh.

Under such circumstances, the courts below have rightfully denied the declaration sought for by the plaintiff-appellant.

There is no merit in the present appeal and the same is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

20.09.2018
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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No