

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

Sr. No.203

CR-4242-2018

Date of decision: 05.12.2019

Harpreet Kaur

....Petitioner

versus

Gurjit Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Dheeraj Mahajan, Advocate
for the petitioner.

None for the respondent.

* * *

DEEPAK SIBAL, J. (Oral)

The present petition filed under Article 227 of the Constitution of India, is directed against the order dated 16.05.2018 passed by the Additional District Judge, Gurdaspur (for short – the Trial Court) through which an ex parte decree of divorce dated 29.04.2017, passed in favour of the petitioner, has been set aside.

In spite of service of the respondent through his mother/Special Power of Attorney holder, no one appears on his behalf.

After hearing learned counsel for the petitioner and perusing the record, the undisputed facts which have emerged are that on 22.09.2007, in accordance with Sikh rites, the petitioner and the respondent got married and lived as husband and wife. Thereafter, they had three

children and then due to differences between them, on 08.11.2016, the petitioner wife filed a petition under Section 27(i)(b)(d) of the Special Marriage Act, 1954 seeking therein dissolution of their marriage. Such petition was allowed through an ex parte decree of divorce dated 29.04.2017.

After the limitation for filing of an application by the respondent seeking therein to set aside the ex parte decree of divorce granted in the petitioner's favour as also for filing of an appeal before this Court had expired, on 18.09.2017, the petitioner married one Sukhdev Singh.

On 03.10.2017 a suit was filed by Narinder Kaur mother of the respondent, seeking therein to restrain the petitioner from claiming custody of the minor children of the petitioner and the respondent, who at that time were in custody of Narinder Kaur.

On 10.10.2017 Narinder Kaur, as a Special Power Attorney holder of the respondent filed an application seeking therein to set aside the ex parte decree of divorce granted in the petitioner's favour.

On 18.10.2017, the petitioner filed a petition under Section 25 of the Guardian and Wards Act, 1890 (for short – the Act) seeking therein custody of the minor children of the parties.

While the aforesaid applications/petition filed by both sides were pending, on 12.12.2017, a written compromise was arrived at between the petitioner on one hand and Narinder Kaur on the other as per which both parties acknowledged that after the ex parte decree of divorce, the petitioner had married Sukhdev Singh. Both parties also agreed to withdraw all proceedings filed by them against each other.

The aforesaid compromise was exhibited by both parties in the civil suit preferred by Narinder Kaur seeking therein to restrain the petitioner from claiming custody of the minor children of the parties and on the basis thereof on 13.12.2017 she withdrew her suit. The petitioner also produced the aforesaid compromise in the petition filed by her under Section 25 of the Act and on the basis thereof on 13.12.2017 she also withdrew her petition.

The only litigation which now survived between the parties was the application filed by the respondent, through Narinder Kaur, with regard to the setting aside of the ex parte decree of divorce passed in the petitioner's favour. Since this application was not withdrawn by the respondent it was considered on its merits and allowed by the Trial Court through order dated 16.05.2018 which is the subject matter of challenge in the instant petition.

In the present petition, the petitioner has specifically pleaded the factum of a written compromise dated 12.12.2017 arrived at between the petitioner and Narinder Kaur, who is the special power attorney holder of the respondent and the person through whom the respondent had filed the application for setting aside of the ex parte decree of divorce. The terms of the compromise read as under:-

- “1. That, the parties are the residents of the above said address.
2. That, the 1st marriage of Harpreet Kaur was solemnized with Gurjit Singh on 22.09.2007 at Gurdwara Singh Sabha Flero BS (Italy). The first marriage was duly registered under Foreign Marriage Act, 1969. Out of said wedlock three children namely Rupinderjit Singh (son) aged 9 years and twins Lovejeet Singh (son) and

Anshpreet (daughter) aged about 7 years were born, presently in the custody of second party.

3. That, as per the compromise between the parties it has been decided that the custody of the minors would remain with the party no.2. That party no.2 will have to take care of the minor children alone.
4. That, the party no.1 have got divorce from Gurjit Singh son of late Parsan Singh of village Jhanda Lubayna, District Gurdaspur vide judgment dated 29.07.2017 passed by the court of Sh. Prem Kumar, Additional District Judge, Gurdaspur.
5. That, now the party no.1 have solemnized her second marriage with Sukhdev Singh son of Lakhwinder Singh resident of village Ghot Pokhar, Tehsil and District Gurdaspur on 18.09.2017 according to Sikh rites with her own will and presently she is living with her second husband Sukhdev Singh. She has also got protection from the Hon'ble High Court after her marriage with Sukhdev Singh.
6. That, Party No.1 have no objection if the children from her first marriage will remain in the custody of her earlier husband Gurjit Singh or her earlier in-laws family. She will not claim the custody of her children from her first marriage. The party no.1 shall withdraw case filed by her for the custody of children from her first marriage which is pending in the court of Sh. Mohit Bansal, Additional Civil Judge (Senior Division), Gurdaspur now fixed for 11.01.2018.
7. That, in future the party no.1 will not claim any type of maintenance or property rights from her first husband Gurjit Singh.
8. That, the party no.2 will withdraw civil suit pending in the court of Smt. Harmandeep Kaur, Civil Judge (Junior Division), Gurdaspur fixed for 13.12.2017.

9. That, both the parties will withdraw their complaints against each other. In future no party shall institute of any type of litigation against each other in the court of law or police station having the competent jurisdiction thereupon.
10. That, the present compromise has been entered between the parties with free Will and without any pressure in the benefit of both the parties in future.”

A perusal of the afore-quoted compromise reveals that both parties acknowledged that after the ex parte decree of divorce in the petitioner's favour she had married Sukhdev Singh and was living with him. Both parties had further agreed to withdraw the litigations filed by them and also not to institute any litigation in future against each other.

The aforesaid compromise was exhibited by Narinder Kaur in her injunction suit filed by her to restrain the petitioner from claiming custody of the minor children of the parties and on the basis thereof she had withdrawn her suit. The petitioner also produced the said compromise deed before the Trial Court in the proceedings instituted by her under Section 25 of the Act and on the basis thereof withdrew her suit.

In view of the above facts, there can hardly be a dispute that the compromise was acknowledged and acted upon by the petitioner and Narinder Kaur. As noted earlier, the compromise duly acknowledged the fact that after the grant of ex parte decree of divorce, the petitioner had married Sukhdev Singh and was presently living with him as his wife. That being so as also for the reason that in spite of service of notice of the present petition, the respondent has not even bothered to appear before this Court to defend the instant petition, the impugned order passed by the Trial Court setting aside the ex parte decree of divorce between the parties is set aside

especially when the petitioner has remarried and also has child from Sukhdev Singh.

The petition is allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

December 05, 2019
Jyoti 1

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