

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.574 of 2017 (O&M)

Date of Decision.22.04.2019

Pooja

...Petitioner

Vs

Gaurav

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amardeep Singh Gill, Advocate
for the petitioner.

Mr. Manmeet Singh Rana, Advocate
for the respondent.

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AMIT RAWAL J. (ORAL)

The present revision petition is directed against the impugned order whereby the application of the petitioner-wife for amendment of application filed under Order 9 Rule 13 CPC seeking setting aside of the ex parte judgment and decree dated 30.03.2015 granting divorce to husband has been dismissed.

Mr. Gill submitted that husband filed the divorce petition on the various grounds wherein the petitioner-wife appeared through counsel and the matter was referred to mediation but somehow or the other did not pursue the matter and counsel also did not appear on 3.12.2014, resulting into initiation of ex parte proceedings and ex parte judgment and decree dated 30.03.2015. Now the application under Order 9 Rule 13 CPC drafted by different counsel was without inspection wherein inadvertently in para 6 and 7 pleaded that there was no appearance. The trial Court dismissed the application on the ground it was highly belated as the evidence in the aforementioned petition had already been over and allowing the application would tantamount to *de novo* trial of the divorce petition. The petitioner is very poor lady and did not know the intricacy of law.

Per contra, Mr. Manmeet Singh Rana, learned counsel appearing on behalf of the respondent opposed the prayer by supporting the order under challenge. It is submitted that such an act tantamounts to filling up of the lacuna, which cannot be permitted at the belated stage. The entire approach of the petitioner had been lackadaisical throughout, thus, urges this Court for dismissal of the revision petition with exemplary costs.

I have heard learned counsel for the parties, appraised the paper book and of the view that amendment sought in the application can be permitted as technicalities of law cannot be pressed into service in a dispute between husband and wife. Sometimes diligence is not resorted to in filing the application by making assertions which are actually not on record. Even if the petitioner had already led in evidence in the application this fact can be rectified being a matter of record. It may have some merit on the adjudication by applying doctrine that a person who does not come with cleans hands should be thrown out. Such a harsh approach on behalf of the trial Court should not have come in the way of the petitioner.

The impugned order is set aside. The application for amendment in the application filed under Order 9 Rule 13 CPC is allowed subject to payments of costs of ₹7000/- which be condition precedent, failing which the impugned order shall restore.

Revision petition is allowed.

(AMIT RAWAL)
JUDGE

April 22, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No