

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

FAO-M-27-2019 (O&M)
Decided on : October 30, 2019

Rukhmani

..... Appellant

Versus

Vasudev

..... Respondent

**CORAM : HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Argued by : Mr. Naresh Kumar, Advocate for
Mr. S.K.Verma, Advocate
for the appellant.

Mr. Vikas Sharma, Advocate
for respondent.

Manjari Nehru Kaul, J.

CM-2185-CII-2019

This is an application under Section 5 of the Limitation Act seeking condonation of 160 days delay in filing the appeal.

For the reasons mentioned in the application, which is duly supported by an affidavit of the appellant, delay of 160 days in filing the appeal is condoned.

CM stands disposed of.

Main case

The instant appeal has been preferred by the appellant-wife – Rukhmani against the judgment and decree dated 16.05.2018 passed by the Addl. District Judge, Sirsa vide which the petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') was allowed.

2. The marriage between the parties was solemnized on

27.09.1999 as per Hindu rites and ceremonies at Ellenabad, District Sirsa.

Three children were born out of the said wedlock.

Learned counsel for the appellant-wife has submitted that in the petition filed under Section 13 of the Act on 22.11.2017 by the respondent-husband, the notice was issued to the appellant-wife through dasti process for 04.05.2018. The appellant-wife claimed that the ex parte proceedings were undertaken against her on the basis of report of alleged refusal of summons, which was in fact false, fabricated and manipulated in connivance with the witnesses shown therein as well as the process server allegedly at the behest of the respondent-husband. The appellant-wife was thereafter ordered to be proceeded against ex parte and the matter then adjourned to 10.05.2018 for recording of ex parte evidence. Ultimately, on 16.05.2018, an ex parte judgment and decree was passed by the Family Court leading to the dissolution of the marriage between the parties. The appellant-wife claimed that in fact the process server never ever visited the residential address as given in the divorce petition, which is at Hanumangarh (Rajasthan) and where she along with her children has been residing. It was further submitted that there had been non-compliance of the provisions of procedure under Order V Rule 17 of Code of Civil Procedure. Further, while proceeding ex parte against the appellant-wife, no procedure of substituted service of summons by way of munadi or publication in newspaper was ordered to be carried out nor were the summons by way of registered post ever sent or received by the appellant-wife in the instant case. She pleaded that the learned Family Court gravely erred in concluding that the appellant-wife could not be served in an ordinary manner and that

she was intentionally not appearing before the Court.

3. We have heard learned counsel for the parties and perused the evidence as well as other material available on record.

4. It is very apparent that the procedure as envisaged under Order V Rule 17 CPC and even Punjab and Haryana High Court Rules and Orders was not followed in the instant case and the impugned order ordering the party to be proceeded against ex parte was taken in undue haste. As per settled law every possible endeavour should be made to serve the respondent personally. In case, every attempt to effect personal service in the first instance fails, then an attempt should be made to effect service through an agent or member of the family for which the process server is duty bound to make repeated efforts for the said purpose, if there is time before the date fixed for scrutiny of service, and obtain for each successive attempt at service, attestations of witnesses different from those, who have attested reports of previous attempts. Suffice it to say, the service as enumerated in Order V Rules 12 to 16 of the CPC should be insisted upon.

5. As a sequel to the above discussion, present appeal is allowed, impugned order dated 16.05.2018 is set aside and the matter is remitted to the Court below for fresh adjudication from the stage where the appellant-wife was ordered to be proceeded against ex parte. Parties are directed to appear before the trial Court on 25.11.2019.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

October 30, 2019
sonia

Whether speaking/non-speaking: Yes/No
Whether reportable : Yes/No