

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

**CM-2869-CII-2021 IN/AND
CR-7251-2019 (O&M)
Date of decision: 16.03.2021**

Prabhdeep Singh

...Petitioner

V/S

Amanjot Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. S.S.Salar, Advocate,
For the applicant/petitioner.
(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

CM-2869-CII-2021

This is an application for preponing the main case, which is pending for 06.07.2021.

For the reasons stated in the application, the prayer for preponement is accepted and the main case is taken up on Board today itself.

Main case

Petition herein is under Article 227 of Constitution of India seeking, inter alia, quashing of order dated 26.09.2019 passed by learned trial Court vide which petition under Section 13 of the Hindu Marriage Act filed by the petitioner has been dismissed for non-prosecution.

Learned counsel for the petitioner submits that petition was filed under Section 13 (b) of Hindu Marriage Act, in which notice was issued for 22.03.2018. Notice was received back unserved with the report that respondent is living abroad. On receipt of this report, the learned trial

court had given an opportunity to petitioner to file correct address/affidavit regarding last known address. On 10.04.2018, the petitioner could not ascertain the correct address. Therefore, the case was adjourned to 25.04.2018. On 25.04.2018, the correct address was filed and the notice was ordered to be issued for 11.07.2018. Notice was received back with the report that the respondent has gone abroad and nobody from the family is ready to receive the summons. Then the learned trial court passed an order that the respondent be served through ordinary process as well as through postal courier service on filing of correct address. The correct address was filed and summons were directed to be issued after filing of postal courier for 12.10.2018. The summons were sent through Email but again the fresh summons were ordered for 26.11.2018 after filing of postal courier. Ultimately, the summons were issued on 06.02.2019. The summons issued through Registered Cover were received back with a report 'Not exist'. The summons issued on 08.03.2019 for New Zealand was returned with a report 'Not at this address' But the Registered Cover issued on Second address of Batala was not received back. Thereafter, it was ordered that summons be sent through Email for 22.05.2019. Even though Email address has already been filed but the report was made that Email address not filed. The Email address was again provided and it was sent on 23.07.2019. It was mentioned in the report that No info Received through Email, therefore fresh summons were issued subject to last opportunity.

Learned counsel further submits that summons were presented to mother of respondent on 20.08.2018. The mother of respondent had signed summons. The CPC provides that service of summons upon any

family member is deemed to be sufficient service. Therefore, no further summons should have been issued after 22.08.2018.

He submits that from Annexure P-6, it is clear that the summons were sent through Email not once but many times. The service should have been deemed to have been effected. The Court had issued the summons through Postal Registered cover also at New Zealand address.

Learned counsel for the petitioner submits that neither the petitioner nor his counsel was negligent in furnishing the correct address/email of the respondent. He submits that the petitioner was not at fault. His case has wrongly been dismissed for want of prosecution.

He submits that petitioner had gone to Australia as a student and now he is on work permit and the respondent is living in Canada. Petitioner and respondent are living separately from the beginning after their marriage.

I have heard learned counsel for the petitioner and gone through the case file.

No grounds are made out to interfere.

Dismissed. However, it is made clear that as and when petitioner is available to file his petition under Section 13 of the Hindu Marriage Act, he is at liberty to do so, at a subsequent stage. Dismissal of the earlier petition for non-prosecution would not come in his way.

Pending application, if any, shall also stand disposed of.

March 16, 2021
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No