

126 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-520-2022
Decided on : 11.05.2022

Mehar Singh

..... Petitioner

Versus

Rita Kumari

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. R.K.Arya, Advocate
for the petitioner.

Manjari Nehru Kaul, J.(Oral)

Instant revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 09.12.2021 passed by Principal Judge, Family Court, Pathankot vide which an application under Order 9 Rule 13 CPC for setting aside the ex parte judgment and decree dated 08.01.2018 passed in case No.164 of 2017 whereby petition under Section 13 of Hindu Marriage Act (hereinafter referred to as 'the Act') was allowed.

Learned counsel for the petitioner *inter alia* contends that even though the respondent was duly served on the address where she was residing, she intentionally did not put in an appearance during the proceedings in a petition under Section 13 of the Act filed by him. Resultantly, the respondent was rightly proceeded against ex parte. He submits that the respondent had been subjecting the petitioner to continuous cruelty, which had led to the filing of the petition under Section

13 of the Act. The fact that she intentionally did not put in appearance even though she was duly served in the proceedings under Section 13 of the Act, further reflects that she had been continuously subjecting the petitioner to cruelty. It is thus, submitted that the Court below gravely erred by not appreciating the aforementioned facts while passing the impugned order.

Heard learned counsel and perused the relevant material on record.

A perusal of the impugned order reveals that the ex parte judgment and decree was passed by the Family Court, Pathankot on 08.01.2018. No sooner did the respondent learn about the ex parte judgment and decree passed, she applied for certified copy of the said judgment and decree on 21.05.2018. It was alleged by her that the petitioner had played a fraud inasmuch as both she and the petitioner were residents of District Kangra, Himachal Pradesh and the petitioner had at no point of time ever lived at Pathankot. It was also pleaded by the respondent that there were a number of litigations pending between the parties at District Kangra (H.P.), which had been intentionally concealed by the petitioner while filing the petition under Section 13 of the Act at Pathankot wherein he had mischievously and intentionally given a wrong address of both of himself as well as of the respondent. It was also pleaded that though the summons in the petition under Section 13 of the Act were sent for service upon the respondent by way of a registered cover, however, the registered cover was not received back. The order for notice to the respondent by registered cover and AD was passed on 03.07.2017 for 08.08.2017, which was stated to have been dispatched on 27.07.2017. The

Ahlmad of the Court reported on 07.08.2017 that registered cover/AD had been received back and attached with the file. The registered cover/AD was received back unserved with the report that the respondent was not found at the said address, which had been furnished by the petitioner. Thereafter, the matter was adjourned by the Family Court, Pathankot for awaiting the presence of the respondent under the impression that registered cover/AD was not received back. On 30.08.2017, the Family Court inadvertently failed to take note of the report of the Ahlmad and presumed service of notice upon the respondent stood effected through registered cover/AD, and thereafter she was proceeded against ex parte. It definitely appears that the Family Court, Pathankot inadvertently failed to take notice of the report of the Ahlmad made on 07.08.2017 that the registered cover and AD had been received back. Learned counsel for the petitioner has miserably failed to satisfy this Court that in the aforementioned circumstances as to how the service upon respondent could be said to have been effected.

This Court, in the above mentioned facts and circumstances, is not inclined to invoke its revisional jurisdiction to set aside the impugned order. Accordingly, the present petition being devoid of any merit, stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

11.05.2022

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Whether speaking/reasoned:

Yes/No

Whether reportable :

Yes/No