

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

FAO-M-136-2019 (O&M)
Date of decision: 13.09.2022

Arti Rani

...Appellant

Vs.

Vikas Minhas and another

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MS. JUSTICE NIDHI GUPTA**

Present: Mr. Hitesh Pandit, Advocate,
for the appellant.

None for the respondent.

Ritu Bahri, J. (oral)

The present appeal has been filed against the judgment and decree dated 02.03.2019 passed by the Additional District Judge, S.A.S. Nagar, Mohali, whereby petition filed by Smt. Arti Rani-petitioner (appellant herein) under Section 13 (1) (a) and 13 (i) (b) of the Hindu Marriage Act, 1955, seeking decree of divorce, has been dismissed.

Marriage of appellant-Arti Rani and respondent No.1-Vikas Minhas was solemnized on 21.11.2011 according to Hindu rites and ceremonies at Ludhiana. Out of this wedlock, no child was born. As per petitioner-appellant, on 25.12.2011, respondent No.1-husband had left for Canada with a promise that he would initiate immigration process for his wife (appellant) in Canada. The parents of respondent No.1 used to harass and humiliate her on account of bringing insufficient dowry. They also demanded cash for purchasing a car. On her refusal to do so, appellant was

thrown out of the matrimonial house on 07.01.2012. Thereafter, she had to reside with her sister namely, Anu Bala. All the jewellery and *istridhan* of the appellant had been retained by her in-laws. Respondent No.2-Jagriti Jaswal informed the appellant regarding second marriage of respondent No.1 with her. It was stated that appellant and respondent No.1 never filed any divorce petition in any Court of law in India, therefore, marriage of appellant-wife with respondent-husband was still valid and subsisting according to law. Respondent No.1-husband had concealed the factum of his Ist marriage with appellant-wife. In this backdrop, appellant-wife filed a petition under Section 13 (1) (a) and 13 (i) (b) of the Hindu Marriage Act for dissolution of their marriage.

Upon notice, respondent-husband filed written statement taking preliminary objections with regard to maintainability, concealment of facts, collusion between the appellant and respondent No.2, locus-standi, estoppel etc. However, marriage between the parties was admitted. It was stated that marriage between the appellant and respondent No.1 had already been nullified vide order dated 04.02.2013 passed by the Court of Queen's Bench of Albert in Canada and this fact was accepted and acknowledged by the appellant vide deed of compromise entered between appellant-wife and respondent No.1, through his father Balinder Singh Minhas. The said compromise deed had been signed by the appellant and the same was duly notarized by the Notary Public and witnessed by the witnesses. It was further stated that the matter was settled vide compromise deed dated 22.09.2012 and Rs.70,000/- were paid by respondent No.1 through his father, to the appellant-wife. All other allegations levelled by the petitioner-wife (appellant herein) were denied and prayer for dismissal of the petition

was made.

Before the trial Court, respondent No.2 was proceeded against exparte vide order dated 25.10.2017.

From the pleadings of the parties, following issues were framed:

1. Whether the respondent treated the petitioner with cruelty?
OPP
2. Whether the petition is not maintainable in the present form?
OPR
3. Whether the petitioner has not approached this Court with clean hands and has concealed true and material facts?OPR
4. Whether the petitioner has no locus standi to file the present petition? OPR
5. Relief.

In order to prove her case, petitioner-wife herself stepped into the witness box as PW-1 and examined Sudesh Kumar, Junior Assistant office of Tehsildar, Hoshiarpur (PW-2), Davinder Singh, President of Shiv Mandir Prabhandak Committee, Hoshiarpur (PW-3) and Shashi Bala Mahajan, Superintendent, Passport Office, Jalandhar (:W-4).

On the other hand, respondent No.1-husband examined his father Balinder Singh (RW-1) and Inderpal Singh, Inspector (RW-2).

The main argument of appellant-wife before the Family Court was that although, she was having ample knowledge regarding the exparte decree of divorce and she had solemnized second marriage with Joginder Rana and is having a child out of the said wedlock, but the exparte divorce decree at Canada is not recognized in India. Moreover, the evidence given

by the husband was that after the exparte decree of divorce, the appellant-wife has also solemnized the second marriage with Joginder Rana and there was a child out of the said wedlock. In this backdrop, the Family Court observed that the appellant was having the knowledge of exparte decree of divorce. She had not disclosed regarding her second marriage with Joginder Rana in the divorce petition. Since the appellant-wife had not disclosed about the second marriage after getting exparte decree of divorce in Canada, her petition for grant of divorce on the ground of cruelty, was dismissed. While dismissing the petition, reference was made to the judgment passed in **Dalip Singh vs. State of U.P.**, (2010) 2 SCC 114.

In the present case, notice of motion was issued on 06.11.2019. With regard to the service of notice, a report was received that he (respondent no.1) was living abroad and notice was received by his father. However, none had put in appearance on behalf of the respondents.

Learned counsel for the appellant has referred to the judgment passed by Hon'ble the Supreme Court in **Y. Narasimha Rao and others vs. Y. Venkata Lakshmi and another**, 1991 (3) SCC 451. In that case, decree of divorce was passed by a foreign Court i.e. USA. Parties married in India and governed by Hindu Marriage Act. The decree of divorce was granted on the ground, which was not covered by the Hindu Marriage Act. The said decree was held to be not enforceable against the wife. Further reference has been made to a judgment passed by the Delhi High Court in **Harmeeta Singh vs. Rajat Taneja**, 2003 (2) RCR (Civil) 197. In that case, husband and wife were of Indian origin. The husband was serving in America. The marriage was solemnized in India and the decree of divorce was granted in USA. It was held that if, the decree is not recognized by Indian Court as per

provisions of Section 13 of Hindu Marriage Act, the husband will be guilty of bigamy if, remarries. Learned counsel for the appellant has referred to another judgment passed by this Court in **Rupak Rathi vs. Anita Chaudhary**, 2014 (2) RCR (Civil) 697, wherein a Hindu couple was settled in foreign country. Foreign Court had granted decree of divorce on the ground of irretrievable breakdown of marriage. It was held that ground of irretrievable breakdown of marriage was not valid ground for divorce under Section 13 of the Hindu Marriage Act. Hence, the decree was not binding on the wife.

In the present case, petition under Section 13 (1) (a) and 13 (i) (b) of the Hindu Marriage Act, 1955, filed by appellant-Arti Rani seeking decree of divorce, has been dismissed by the Additional District Judge, S.A.S. Nagar, Mohali, by recording a finding that the appellant could not lead any evidence of cruelty faced by her at the hands of respondent No.1-husband. The appellant solemnized her second marriage with Joginder Rana in the year 2013. The exparte decree of divorce was got by respondent No.1 from Canada in the month of February, 2013. This fact was not disclosed by the appellant-wife in her petition while seeking decree of divorce from Vikas Minhas-respondent No.1. A perusal of the impugned judgment further shows that respondent No.1-husband was having dispute with his second wife namely Jagriti Jaswal-respondent No.2 as well and she had lodged a police complaint at Police Station, Hoshiarpur. The respondents had examined Inderpal Singh, Inspector (RW-2), who brought the summoned record pertaining to the complaints No.72 NRI dated 16.09.2016, No.68 NRI dated 12.09.2016 and No.91 NRI moved by Shamsher Singh, resident of Purani Bassi, Police Station, Sadar, Hoshiarpur

against respondent No.1. Statement of the appellant was recorded by the police as Ex.R1/6. The enquiry report was proved on record as Ex.R1/7. After passing of the exparte decree of divorce at Canada, the appellant-wife had solemnized her second marriage. Reference, at this stage, can be made to the judgment passed by Hon'ble the Supreme Court in Y. Narasimha Rao's case (supra) and another judgment passed by the Delhi High Court in Harmeeta Singh's case (supra), whereby it has been held that if, the decree is not recognized by Indian Court as per the provisions of Section 13 of the Hindu Marriage Act, the husband will be guilty of bigamy if, remarries. Hence, the decree passed by a Court in Canada, is not acceptable in India.

Be it as may be, the marriage of the parties was solemnized on 21.11.2011 and they are staying separately since 2013. Further, the appellant-wife has already solemnized second marriage with one Joginder Rana and there is a child from this wedlock as well. At this stage, if decree of divorce is not granted to the appellant, it would amount to further cruelty to the appellant as well as her child. In this case, divorce cannot be denied to the appellant only on the ground that the exparte decree of divorce granted in Canada is not acceptable in India, especially keeping in view that respondent No.1-husband has also solemnized second marriage with one Jagriti Jaswal. This fact has been observed by the Family Court.

If, the present appeal, filed by the appellant-wife, is not accepted, it will create an atmosphere of agony for both the parties. Rather, non grant of divorce would amount to mental cruelty towards the wife and her child from the marriage with Joginder Rana.

Keeping in view the above discussion and the ratio of the aforesaid judgments, the impugned judgment and decree dated 02.03.2019

passed by the Additional District Judge, S.A.S. Nagar, Mohali, are set aside and decree of divorce is granted to the appellant. Decree sheet be drawn.

Appeal stands allowed accordingly.

(RITU BAHRI)
JUDGE

(NIDHI GUPTA)
JUDGE

13.09.2022
ajp

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