

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-M-119-2013

Date of decision 05.04.2022

Nikki @ Urmila

....Appellant

VS

Deepak

...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. Gaurav Mohunta, Advocate
for the appellant.

Respondent ex parte

Ritu Bahri, J. (Oral)

The present appeal has been filed against the judgment and decree dated 05.03.2013 passed by learned District Judge, Jind, vide which petition filed under Section 13 of the Hindu Marriage Act, 1955 (for short 'Act 1955') by the appellant-wife has been dismissed.

Brief facts of the case are that marriage between the parties was solemnized on 23.03.2007 according to Hindu rites and ceremonies at Village Kheri Masania, District Jind. Out of this wedlock, a daughter namely Vidhi was born on 08.11.2010. However, the appellant started living separately from 2011 due to temperamental differences between the parties. She then filed a divorce petition under Section 13 of the Hindu Marriage Act. Upon the application of the appellant under Section 24 of the Hindu Marriage Act, the respondent was ordered to pay Rs.3000/- per month (Rs.2000/- for herself and Rs.1000/- for minor daughter) towards pendente lite maintenance from the date of its filing besides litigation expenses of Rs.5500 but he did not pay it and his defence was struck off, vide order dated 06.12.2012. Subsequently, the petition

decree dated 05.03.2013 and it has been held that the appellant wants to get rid of the respondent by levelling false allegations against him, his family members and relatives and since April, 2011, she was residing with her brother-in-law, Rakesh at Jind, which shows that she was having illicit relations with him and does not want to live with the respondent.

Thereafter, the appellant filed the present appeal along with CMM-60-2013 seeking maintenance pendente lite.

A bare perusal of the zimini order shows that various attempts were made to serve the respondent but the respondent did not appear. On 13.08.2014, publication was issued in daily newspaper 'Dainik Jagran'. The publication was effected but none appeared for the respondent and he was proceeded ex parte, vide order dated 26.08.2014. Finally, the appeal was admitted on 11.12.2014 and CMM-60-2013 was decided by this Court and the appellant was awarded Rs.3000/- per month (Rs.2000/- for herself and Rs.1000/- for minor daughter) towards pendente lite maintenance under Sections 24 and 26 of the Hindu Marriage Act, from the date of application during the pendency of the appeal in this Court along with litigation expenses of Rs.11000/- by the respondent-husband.

Thereafter, C.M. No. 11739, 11742 and 11744-CII-2021 were filed before this Court on the ground that the matter stands compromised between the parties. Notice of the applications was issued but again none appeared on behalf of the respondents and finally, on 06.12.2021, learned Assistant A.G. Haryana was directed to inform the respondent through concerned SHO to be present in Court on the next date of hearing. Finally, on 14.12.2021, this Court passed the following order:-

“An attempt was made to serve the respondent by giving direction to the State of Haryana to get his service done through concerned SHO. As per the report dated 12.12.2021

received from the SHO, Police Station Mohana, the respondent as well as family members were not found staying at the given address and as per the information given by one of the relatives, they had left the house 15 years back.

Even in the present appeal, service has been effected by way of publication as is evident from order dated 26.08.2014. Keeping in view the respondent is not found staying at the given address and in the present case, as per compromise effected, respondent-Deepak was present on 09.07.2021 when compromise dated 09.07.2021 (Annexure A-1) was carried out. Since the respondent is not present today, learned counsel for the applicant/appellant does not press these applications.

Applications are dismissed as not pressed.

Let this appeal be listed on 23.02.2022 for final disposal.

Lower Court record be also summoned for the date fixed.

At the very outset, learned counsel for the appellant has referred to Division Bench judgments of this Court in cases of ***Sheela Devi vs. Gurmukh Singh***, 2012 (8) R.C.R (Civil) 54, ***Paramjeet vs. Bhim Singh***, 2014 (30) R.C.R (Civil) 201 and ***Rashwinder Kaur vs. Ravinder Pal Singh***, 2013 (1) HLR 483 to contend that the maintenance having not been paid, the Court has no option but to strike off the defence of the respondent-husband and grant a decree of divorce in favour of the appellant-wife. Accordingly, the allegations of the appellant-wife have gone unrebutted and the same are held to be accepted.

In the present case as well, the defence of the respondent was struck off, vide order dated 06.12.2012 passed by District Judge Jind, as he did not pay maintenance pendente lite to the appellant. Thereafter, before this Court as well, he did not appear and was proceeded ex parte, vide order dated 26.08.2014. This Court has made consistent efforts to resolve the matter

between the parties but the respondent did not turn up even once. Till date, no maintenance has been paid by the respondent, which comes to Rs. 2,60,000/- approximately (i.e Rs.3000/- per month), as per order dated 11.12.2014.

Applying the ratio of the above mentioned judgments to the facts of the present case, the appeal is allowed and judgment and decree dated 05.03.2013 passed by learned District Judge, Jind is set aside. Resultantly, the petition filed by the appellant-wife for grant of divorce under Section 13 of the Hindu Marriage Act is allowed and the marriage between the parties stands dissolved by a decree of divorce. Decree sheet be prepared accordingly.

(RITU BAHRI)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

05.04.2022
G Arora

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