

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

FAO No.5591 of 2017 (O&M)
Date of decision: 31.03.2022

Smt. Ankita @ Soni

...Appellant

Vs.

Akash Tomor

...Respondent

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

Present: Mr. Ram Pal Verma, Advocate,
for the appellant.

Mr. Akash Vashisth, Advocate,
for the respondent.

Ritu Bahri, J. (Oral)

Appellant-wife (Smt. Ankita) has come up in appeal against the judgment dated 28.02.2017 passed by the District Judge, Family Court, Sonapat, whereby petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act'), filed by the respondent-husband (Akash Tomor) for dissolution of marriage by a decree of divorce has been allowed.

Marriage between the parties was solemnized on 25.04.2012 as per Hindu rites and rituals at village Salaimpur Kutaiyana, District Ferozabad. However, no child was born out of this wedlock. As per averments made in the petition under Section 13 of the Act, on 29.08.2012, respondent-wife (appellant herein) had left her matrimonial home along with ornaments and other valuable clothes without any reason. Panchayats were convened to bring her back. Even, the husband-respondent had filed a petition under Section 9 of the Hindu Marriage Act, 1955, which was

decreed vide judgment dated 11.03.2015. However, despite the said decree, the wife did not join the company of the husband. After passing of one year, when the said decree was not complied with, a petition under Section 13 (1A) (ii) of the Act for dissolution of the marriage was filed by the husband-respondent, notice of which, was served upon the wife, but she did not appear before the Family Court and was proceeded against ex-parte. Ultimately, the said petition was allowed vide judgment dated 28.02.2017. Feeling aggrieved, appellant-wife filed the present appeal.

Learned counsel for the appellant-wife has argued that before the Family Court, service upon the appellant had not been effected, therefore, the impugned decree has been wrongly passed ex-parte.

A perusal of the record of the lower Court shows that notice of the petition was issued to the appellant-wife by the Court of District Judge, Family Court, Sonipat, on 12.10.2016 and as per report, service was effected on 04.11.2016 at village Slaimpur Khutiyana and her aunt (*chachi*) received the summons. She also affixed her thumb impression after accepting the summons in the presence of witnesses Ram Kumar son of Shyam Pal and Ashok Singh son of Rakesh Singh. For all intents and purposes, service upon respondent-wife (appellant herein) was duly effected.

Further, a perusal of the judgment dated 11.03.2015, Ex.P1, passed by the District Judge, Family Court, Sonipat in a petition under Section 9 of the Hindu Marriage Act, shows that notice of the said petition was issued upon the wife (appellant herein), but she failed to appear despite service and in this backdrop, she was proceeded against ex-parte. Hence, even in the petition under Section 9 of the Hindu Marriage Act, she was

proceeded against ex-parte as after service, she did not choose to put in appearance. The said petition was filed on 27.05.2013 and was decreed on 11.03.2015. After a gap of one year, when the said decree was not complied with, the husband filed a petition under Section 13 of the Act seeking dissolution of marriage. Even in this petition, the wife had not appeared and was proceeded against ex-parte by the Family Court.

While passing the impugned judgment, the Family Court had referred to the decisions given by this Court in **Sunny Kumar vs. Mamta Rani**, 2015 (2) RCR (Civil) 263 and **Bimla Devi vs. Singh Raj son of Dasondhi Ram**, 377 AIR (Punjab) 167, wherein it was held that when a spouse fails to obey decree of restitution of conjugal rights or the decree remains unexecuted for one year, then the husband or wife can seek divorce under Section 13 (1-A) (ii) of the Act. Further reference has been made to a judgment passed by Hon'ble the Supreme Court in **Dharmendra Kumar vs. Usha Kumar**, 1977 AIR (SC) 2218, wherein it was held that even a wife, who got a decree for restitution of conjugal rights, but does not accept husband/s invitation to live with him, is not debarred under Section 23 (1) (a) of the Hindu Marriage Act, 1955 for obtaining divorce under Section 13 (1A) (ii) of the Act.

In the present case also despite passing of the decree for restitution of conjugal rights on 11.03.2015, Ex.P1, the appellant-wife did not join the company of the husband and failed to comply with the said decree. Consequently, after passing of one year, the husband filed a petition under Section 13 of the Act for dissolution of the marriage by way of decree of divorce, which was accepted by the Family Court vide impugned judgment dated 28.02.2017. In these circumstances, we are of the view that

the divorce has been rightly granted by the Family Court ex-parte as the appellant-wife after being duly served, did not chose to appear before the Court. Further she did not comply with the decree dated 11.03.2015 passed in a petition under Section 9 of the Hindu Marriage Act.

In view of the above discussion, no ground is made out to interfere in the impugned judgment passed by the Family Court, Sonipat.

No merits. Dismissed.

(RITU BAHRI)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

31.03.2022
ajp

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