

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-180-2017 (O&M)

Date of decision: 11.07.2022

Satnam Kaur

....Appellant

Vs.

Harparkash Singh through his LRs

....Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. H.S.Batth, Advocate
for the appellant.

Ritu Bahri, J.

The appellant, Satnam Kaur has come up in this appeal against the judgment and decree dated 06.03.2014 passed by the learned District Judge, Amritsar whereby her petition for divorce under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act, 1955) was allowed ex-parte.

The brief facts of the case are that the marriage of the parties was solemnized on 24.01.1991 and they were blessed with a female child namely Gagandeep Kaur on 13.10.1991. Earlier, a divorce petition was filed by the respondent in the year 1995 which was pending in the Court of Shri D.K.Monga, the then Additional District Judge, Amritsar and the matter was compromised and as such the petition was dismissed as withdrawn on 15.02.1997. The statements given by the parties in that petition had been placed on record as Ex.PA and PB and that order passed by the Court is Ex.PC. Thereafter, the parties lived together as husband and wife at village Kotla Sultan Singh upto February 1999. But again, respondent filed another divorce petition which was ultimately dismissed on

16.07.2003 by the Court of Shri S.K.Garg, the then Additional District Judge, Amritsar on merits and certified copy of the judgment passed in that petition is Ex.PD.

The case of the appellant was that the respondent had contracted marriage with one Romy alias Jasmeet Kaur and had two children from that wedlock. This fact was proved by her mother Gurcharan Kaur who appeared as PW3 and tendered her affidavit Ex.PW2/A, and one Dalbir Singh as PW2, who tendered his affidavit Ex.PW3/A. The respondent despite putting in appearance in the Court, did not contest the petition and he was proceeded ex-parte vide order dated 21.10.2013. The said order was never challenged by the respondent. In view of the evidence led by the appellant-wife, she was granted ex-parte decree of divorce.

The appellant-wife had filed this appeal after inordinate delay of 1139 days and impleaded LR's of the respondent (who died on 14.02.2014) by way of filing CM-19435-CII-2018.

On 15.01.2018 when this case was taken up, a direction was given to the appellant to furnish details of Romy alias Jasmeet Kaur (with whom husband had solemnized marriage) and their two children. On 10.09.2018, when this case was taken up this Court had observed that as per the death certificate (Annexure A-1), the husband had died on 14.02.2014 and since the ex-parte divorce was granted on 06.03.2014, it will not have a binding effect on the rights for grant of family pension and other benefits as the husband was serving in Indian Army as Hawaldar. Her application for review of ex-parte decree of divorce dated 06.03.2014 was dismissed vide order dated 11.11.2014 on the ground that it was barred by time and setting aside ex-parte decree of divorce dated 06.03.2014 would give financial

benefits to the appellant on account of death of husband, who was Hawaldar in the Army. The appellant was directed to furnish details of other family members of the respondent with an additional averment that no third party interest should be prejudiced in case application for impleading LRs was allowed. Thereafter, on 22.10.2018, CM-19435-CII-2018 for impleading the LRs of the respondent was allowed and notice was issued for 07.02.2019. On 07.02.2019, when this case was taken up, respondent No. 1 had been served. However, respondents No. 2 to 4 could not be served due to improper address. Fresh notices were issued to respondents No. 2 to 4 after giving correct address. On 13.09.2019, CM-15333-CII-2019 was allowed to effect service of respondents No. 2 to 4 by way of publication in two leading newspapers of the area. The service was completed by making publication as per the report of Magistrate dated 21.10.2019. With the same application, the appellant had placed on record judgment dated 22.03.2018 (Annexure A-1) whereby the suit was filed by Jasmeet Kaur, Harsimran Kaur and Manraj Singh son of late Harparkash Singh for declaration and permanent injunction that they were entitled to the entire service benefits comprising pension, payment of death benefits under extended army group insurance scheme etc. and other benefits arising out of death of Harparkash Singh. A perusal of the said suit (Annexure A-1) shows that the present appellant alongwith her daughter Gagandeep Kaur had compromised the matter before the Mediation and Conciliation Centre, Amritsar with the plaintiffs/Jasmeet Kaur, Harsimran Kaur and Manraj Singh son of late Harparkash Singh on the following conditions:-

1. That both the parties have settled their dispute amicably and in this regard, it has been settled between the parties that all the

pension benefits, extended army group insurance and other benefits arising out of the death of Harparkash Singh, Army No13964555-Y Rank SEP AMC Corps having identity No. 1030917 will be given to Satnam Kaur wife of Harparkash Singh. That Smt. Satnam Kaur will give 25% of the arrears of the pension benefits excluding insurance claim to Smt. Jasmeet Kaur and her children.

2. That the land property of late Sh. Harparkash Singh who died on 14.02.2014 will be divided between Harsimran Kaur, daughter, Manraj Singh son of Smt. Jasmeet Kaur and Smt. Gagandeep kaur daughter of Satnam Kaur wife of Harparkash Singh in three equal parts.
3. That the residential house of Harparkash Singh is given to Smt. Jasmeet Kaur and her children and they will be owner of the house.
4. That both the parties shall remain bound by the terms and conditions of the compromise. That this compromise is also settled with the assistance and voluntarily free consent of Smt. Prabhjot Kaur wife of Varinder Singh Kahlon resident of Kothi No. 65-A, Guru Nanak Avenue, Majitha Road, Amritsar.
5. That both the parties will cooperate with each other for the settlement of the benefit claims of Army and mutation of the land and house before the revenue authorities. Both parties are bound to appear in person and will give affidavits in this regard, if required by the concerned departments.

In view of the compromise arrived at between the parties, the

suit of the plaintiffs/Jasmeet Kaur, Harsimran Kaur and Manraj Singh son of late Harparkash Singh, was decreed accordingly.

In the present case, once the suit was decreed in favour of Jasmeet Kaur, in view of the compromise arrived at between the appellant and Jasmeet Kaur and others, and the appellant had been taken up as legal wife of Harprakash Singh, application (CM-16300-CII-2017) is allowed and the delay of 1139 days in filing the appeal is allowed.

With these observations, appeal is allowed and the judgment and decree dated 06.03.2014 passed by the learned District Judge, Amritsar is set aside.

Pending applications stand disposed of.

(RITU BAHRI)
JUDGE

11.07.2022
Divyanshi

(ASHOK KUMAR VERMA)
JUDGE

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