

263

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

C.R NO. 1691 of 2020 (O & M)

DATE OF DECISION: 01.05.2023

Gurdeep Singh**...Petitioner****Versus****Salveen Kaur****...Respondent****CORAM : HON'BLE MR.JUSTICE ARUN MONGA**

Present : Mr. S. S. Momi, Advocate,
For the petitioner.

Mr. Prateek Gupta, Advocate,
For the respondent.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for setting-aside two orders dated 25.11.2019 and 10.12.2019 (Annexures P-7 and P-8, respectively) passed by learned Additional Principal Judge, Family Court, Karnal (for brevity, 'Family Court'), whereby in a petition under Hindu Adoption and Maintenance Act, 1956 filed by the respondent (wife), application filed by the petitioner under Order 7 Rule 11 CPC, was dismissed and another application filed by respondent was allowed and whereby petitioner was restrained from alienating, leasing, mortgaging the property in question till final decision of case.

2. Succinct facts first.

2.1. Petition under Section 13-B of Hindu Marriage Act, 1955 (hereinafter referred to as "the Act") for grant of decree of divorce by mutual consent was filed by the parties. It was stated therein that marriage of parties was solemnized on 18.12.2006 at Krishna Garden, Gharaunda, District Karnal, according to Sikh rites and ceremonies. After their

marriage, both parties cohabited as husband and wife. Out of said wedlock, two children were born. Parties resided as husband and wife till 15.06.2016. Thereafter petition for divorce by way of mutual consent was filed by them. A sum of Rs.15,00,000/-, as full and final settlement as permanent alimony was decided.

2.2. As per terms of the settlement, custody of minor children would permanently be with petitioner i.e., father. It was further decided that wife will not claim any kind of maintenance or permanent alimony or any property from petitioner-husband. It was also settled that in case petitioner No.2-wife fails to appear before the Court at the time of second motion statement she will be bound to return Rs.15,00,000/-. First motion hearing statement was recorded on 17.07.2018. After recording statement of second motion hearing, marriage between both the parties was dissolved by way of decree of divorce by mutual consent in terms of the Act on 05.02.2019 vide judgment and decree (Annexure P-1).

2.3 Unexpectedly respondent-wife turned around and on 01.05.2019, filed another petition claiming maintenance under the provisions of Hindu Adoption and Maintenance Act, 1956. It was alleged therein that one plot bearing No.2099, Sector-4 Part-II, Urban Estate, Karnal was purchased by petitioner-husband and at the time of raising construction, mother of wife gave Rs.20,00,000/-. It was further pleaded that her signatures were taken on some papers on the pretext that same are required in bank and on 17.07.2018, he took her to District Courts Karnal on the pretext that he is getting prepared documents for USA as both of them had already submitted certain documents for applying visa for USA. She further alleged in those proceedings that decree of divorce by mutual consent had been obtained by husband by way of fraud.

2.4 Upon notice, petitioner/respondent appeared and filed reply to same. He also filed application (Annexure P-5) under Order 7 Rule 11 CPC for rejection of petition claiming maintenance on the ground that marriage between parties has already been dissolved by way of decree of divorce by mutual consent. It is further pleaded that petition is not maintainable as respondent has already received a sum of Rs.15,00,000/- as permanent alimony and she has no right to seek injunction and sought rejection of the petition.

2.5 Upon notice, respondent-wife appeared and filed reply (Annexure P-6) stating that application is not maintainable and it does not fall within the purview of Order 7 Rule 11 CPC. It was further pleaded that averments made in petition under Section 13-B of the Act were false and frivolous and decree of divorce was obtained by way of fraud.

2.6. Vide impugned order dated 25.11.2019 (Annexure P-7), learned Family Court dismissed application (Annexure P-5) under Order 7 Rule 11 CPC.

2.7. Respondent-wife filed another interim application seeking to restrain petitioner-husband from alienating, leasing out, mortgaging House No.2099, Sector-4, Part-II, Urban Estate, Karnal stating that husband is trying to alienate the said property.

2.8. Upon notice, petitioner-husband appeared and filed reply taking objection that application is not maintainable. It was reiterated that parties filed a joint petition under Section 13-B of the Act wherein respondent-wife that she will not claim any right in the property or seek maintenance. It was further maintained that property in question is a self acquired property and she has nothing to do with the same.

2.9. Said interim application for stay filed by respondent herein/wife was allowed vide impugned order dated 10.12.2019 (Annexure P-8) by learned Family Court and petitioner herein/husband was restrained from alienating the property in question. Hence, the instant petition.

3. I have heard learned counsels for the parties and have gone through the records.

4. Grounds of rejection by operation of law under Order 7 Rule 11 CPC are very limited i.e., either (i) Non-disclosure of cause of action or (ii) Where suit is barred by any law.

4.1. Interim order dated 25.11.2019 is premised on the following reasoning:-

“In view of the submissions made by learned counsel for the parties, I am of the considered view that it is rightly contended by learned counsel appearing on behalf of the petitioner that the application does not fall within the purview of Order 7 Rule 11 CPC and disputed question of law and facts cannot be decided at the time of considering the application filed under Order 7 Rule 11 CPC. The entire facts submitted by the petitioner as well as by the respondent are the mixed question of facts and law and will be decided after recording the entire evidence on behalf of both the parties. Hence, the application filed by the respondent-applicant stands dismissed.”

5. There is no room for interference in the aforesaid valid reasons recorded by learned Court below.

6. No material irregularity in law or procedure has been committed by learned Court below, so as to exercise extraordinary revisional jurisdiction herein. Resultantly order dated 25.11.2019 is upheld.

7. In the course of hearing, on a Court query, learned counsel for petitioner-husband fairly concedes that it is not that petitioner-husband

is in any rush and/or has got a buyer to sell the property but interim order granting injunction against petitioner to alienate the property creates a cloud on the célèbre of the property to the extent that it creates a cloud.

8. I am in agreement with learned counsel for petitioner, more particularly, when no steps have been taken by respondent to get the decree of dissolution of marriage granted under Section 13-B of Hindu Marriage Act set aside on the ground of some coercion or fraud, as is the case pleaded by respondent-wife.

9. At this stage, learned counsel for respondent-wife states that some steps have been taken and application has been filed before learned Family Court seeking to set aside the decree of divorce of mutual consent in which notice was issued to petitioner-husband, but issuance of notice itself is under challenge by way of FAO No.3365 of 2021.

10. Be that as it may, what transpires, as on today is that decree of divorce has not been recalled. In the overall premise, I am of the view that ends of justice would be met in case impugned order dated 10.12.2019 is modified to the extent that instead of property being injuncted, liberty is granted to petitioner that in case he wishes to dispose of any of the assets as injuncted by the Courts below, he shall seek leave of the Court below for doing the same.

11. With these observations, instant revision petition stands disposed of.

12. Pending applications, if any, shall also stand disposed of.

MAY 01, 2023
Shalini

(ARUN MONGA)
JUDGE

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