

CR-1871 of 2023 (O&M)

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

CR-1871 of 2023 (O&M)
Reserved on: 27.07.2023
Pronounced on: 21.08.2023

Dr. Chetna

.....Petitioner

vs.

Dr. Rakesh

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -

Mr. B.S. Rana, Sr. Advocate, assisted by
Mr. Nayandeep Rana, Advocate, and
Mr. Rajan Singh, Advocate, for the petitioner.

NAMIT KUMAR, J. (ORAL)

1. Challenge in the present revision petition filed under Article 227 of the Constitution of India read with Section 115 read with Section 151 CPC is to the order dated 01.12.2022 passed by the Court of Principal Judge, Family Court, Rewari, whereby application filed by petitioner-wife under Order 7 Rule 10, 11(a)(d) read with Order 23 Rule 1(4) CPC and 23(1)(b) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') for rejecting/dismissing the second petition filed by the respondent-husband, has been dismissed.

2. The brief facts leading to the filing of the present revision petition, as have been pleaded in the revision petition, are that marriage between the petitioner-wife and respondent-husband was solemnised on 09.05.2016 and thereafter a divorce petition under Section 13(1)(i-a)(iii) of the Act was preferred by respondent-husband on 21.09.2017. Since there was a compromise between the parties, the divorce petition was

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withdrawn by the respondent vide order dated 25.01.2018, which reads as under: -

“Petitioner Dr. Rakesh Singh has appeared and made the statement he has compromised the matter with respondent and they are living together as husband and wife and therefore, he does not want to proceed further with the present petition and withdraw the same. Respondent Dr. Chetna has also appeared and made her separate statement that she has no objection if the petitioner withdraw the present petition. Their statements has been countersigned by Sh. Ajay Ahlawat, Advocate. Heard. In view of this statement, the present petition is hereby dismissed as withdrawn. File be consigned to record room, after due compliance.”

3. Thereafter, second divorce petition was preferred by the respondent-husband on 12.04.2017. Petitioner-wife filed an application under Order 7 Rule 10, 11(a)(d) read with Order 23 Rule 1(4) CPC and 23(1)(b) of the Act for rejection/dismissal of the second divorce petition on the ground that earlier divorce petition was withdrawn by him without seeking any liberty to file fresh petition, therefore, the second divorce petition be rejected/dismissed. The said application has been dismissed by the Family Court, Rewari vide order dated 01.12.2022, which has been impugned in the present petition.

4. Learned Senior counsel for the petitioner has contended that since the earlier divorce petition was withdrawn without seeking any liberty to file a fresh petition, the second petition was not maintainable, therefore, the same was liable to be dismissed/rejected under Order 7 Rule 10, 11(a)(d) read with Order 23 Rule 1(4) CPC and 23(1)(b) of the Act and the application filed by the petitioner-wife has wrongly been

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rejected by the Family Court. In order to get withdrawn the domestic violence proceedings against the respondent the compromise was made between the parties. In support of his contentions, learned Senior counsel placed reliance on the judgments of this Court in ***Shashi Kumar Khanna v. Romila, 2000(4) R.C.R.(Civil) 324*** and ***Janak Raj v. Smt. Nirmla Devi, 2001(3) PLR 494***.

5. I have heard learned Senior counsel for the petitioner and perused the record.

6. Admittedly, the earlier petition filed by the respondent-husband was withdrawn by him vide order dated 25.01.2018 when he made a statement before the Court that he has compromised the matter with the petitioner-wife and they are living together as husband and wife and, therefore, he does not want to proceed further with the first petition and withdrew the same. The petitioner-wife had also appeared and made her separate statement that she has no objection if the respondent-husband withdraws the first petition. In view of the respective statements of both the parties, the petition was dismissed as withdrawn. There was no occasion for the respondent-husband at that point of time to seek any liberty to file fresh one. However, on accrual of fresh cause of action, respondent-husband has preferred the second divorce petition, which cannot be said to be not maintainable and liable to be rejected at the threshold without trial by the competent Court. The factum of filing of the earlier petition has been mentioned by the respondent-husband in para 7 of the second petition wherein it has been stated that he had earlier filed divorce petition against the petitioner-wife and the same was withdrawn on the statements of both the parties vide order dated 25.01.2018 and the

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petitioner and respondent had started living together as per their statements suffered before the Court on 25.01.2018 but the wife did not mend her ways and kept to continue with her activities and deserted the respondent-husband from her company after seven days from 25.01.2018 and that finally in the month of June, 2018 the wife came to the respondent-husband only for one day and she is living separately from him.

7. The judgments (supra) relied upon by the learned senior counsel for the petitioner are distinguishable from the facts of the present case and are not applicable, therefore, no benefit of the same can be given to the petitioner.

8. In view of the above, I do not find any illegality or perversity in the impugned order. Hence, the revision petition is dismissed.

21.08.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No