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

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**CR-1184-2021 (O&M)
Reserved on 21.12.2022
Date of Decision : 04.01.2023**

Rajvinder Kaur

....Petitioner

VERSUS

Paramjeet Singh

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. S.S.Sahu, Advocate for the petitioner.

Mr. Harvinder Singh Mann, Advocate for the respondent.

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ALKA SARIN, J.

The present revision petition has been filed under Article 227 of the Constitution of India impugning the ex-parte order dated 19.04.2021 and order dated 21.12.2020 passed by the Executing Court.

The brief facts relevant to the present *lis* are that the marriage of the parties was solemnized on 28.09.2014 and out of that wed-lock one female child was born. Due to differences between the parties, they started residing separately from 05.06.2016. Subsequently, an application under Section 13-B of the Hindu Marriage Act, 1955 was filed on basis of a Panchayati compromise dated 06.07.2018. In the divorce petition it was inter-alia mentioned that *"It has also been decided with mutual consent that the minor child Navjot Kaur shall remain with the petitioner No.2 for six months from the passing of decree of divorce and after that the petitioner*

No.2 shall be bound to handover the custody of the minor child Navjot Kaur to the petitioner No.1. It has also been decided with mutual consent that if the petitioner No.2 shall solemnize the marriage prior to the passing of six months from the date of passing of decree of divorce, then the petitioner No.2 shall be legally bound to handover the custody of the child Navjot Kaur to the petitioner No.1 prior to the solemnization of marriage”.

The joint statement of the parties was recorded on the first motion on 03.07.2018 wherein it was inter-alia recorded that *“It has been agreed that child Navjot Kaur will remain with petitioner No.2 and petitioner No.2 shall not claim custody of minor child from petitioner No.1. It has been agreed that the child shall be handed over to petitioner No.1 by petitioner No.2 after lapse of six months of divorce or remarriage of petitioner No.2 whichever is earlier and thereafter petitioner No.2 shall not claim the custody of the minor child from petitioner No.1”.*

Thereafter, on 10.01.2019 the joint statement of the parties was recorded stating inter-alia that *“It has been agreed that minor child Navjot Kaur will remain with petitioner No.2 and after six months of passing the decree of divorce the child will be given to petitioner No.1 and in case petitioner No.1 shall remarry she shall return the minor child to petitioner No.2 prior to six months of her marriage and she shall not claim custody of minor child from petitioner No.2”.* The decree of divorce was passed on 10.01.2019 and in the judgement it is mentioned that *“It has been agreed that minor child Navjot Kaur will remain with petitioner No.2 and after six months of passing the decree of divorce the child will be given to petitioner No.1 and in case petitioner No.1 shall remarry she shall return the minor*

child to petitioner No.2 prior to six months of her marriage and she shall not claim custody of minor child from petitioner No.2”.

There was thus an error in the judgement dated 10.01.2019 about the actual terms of settlement regarding the custody of the minor child as reached between the parties and as mentioned by the Court. An application was thereafter filed by the respondent herein for correction of the judgment and decree dated 10.01.2019 with an endorsement of no objection on the application itself. In this application it was pleaded that the settlement regarding the custody of the minor child was wrongly mentioned. Vide order dated 18.05.2019, in the presence of counsel for both the parties, the order dated 10.01.2019 was directed to be corrected. The order dated 18.05.2019 reads as under :

“Main case file received. Instant application has been moved by petitioner No.1 for seeking correction in the judgment dated 10.01.2019 passed by this Court. Learned counsel for petitioner No.2 had made endorsement of no objection on the application itself.

It is pleaded that in para No.3 of the judgment regarding custody of the minor child, settlement of the parties was wrongly mentioned. It was agreed that minor child Navjot Kaur was to remain with petitioner No.2 and after six months of the decree of divorce, the child was to be given to petitioner No.1 and in case, petitioner No.2 shall remarry prior to the period of six months, she was bound to return the minor child to petitioner No.1 prior to said six months and further that she

would not claim the custody of the minor child from petitioner No.1.

Joint statement of the parties recorded on second motion also referred to on this aspect wherein the parties had so stated on this aspect.

In the given circumstances, as per the joint statement of the parties on second motion, the application is allowed. Necessary correction in para No.3 of page No.3 in 8th line onward in that sentence, wherein it has been mentioned as under:-

“It has been agreed that minor child Navjot Kaur will remain with petitioner No.2 and after six months of passing the decree of divorce, the child will be given to petitioner No.1 and in case, petitioner No.1 shall remarry, she shall return the minor child to petitioner No.2 prior to six months of her marriage and she shall not claim custody of minor child from petitioner No.2.”

The said sentence shall now be read as under:-

“It has been agreed that minor child Navjot Kaur will remain with petitioner No.2 and after six months of passing the decree of divorce, the child will be given to petitioner No.1 and in case, petitioner No.2 shall remarry, she shall return the minor child to petitioner No.1 prior to six months of her marriage and she shall nto claim custody of minor child from petitioner No.1.”

Accordingly, correction at three places in lines 12, 13 and 14 at page No.3 is made in red ink in the judgment dated 10.01.2019 of this court, in the main file. It is further ordered that this order shall form part of the judgment dated 10.01.2019 and in case, any application is moved seeking copy of the said judgment dated 10.01.2019, this order shall also form part of the judgment to be supplied with said copy. Papers be tagged with the main case after making necessary correction and the file be consigned to the record room after due compliance.”

Thereafter, an execution application was filed by the respondent herein. The petitioner herein, despite service, failed to appear before the Executing Court and was proceeded against ex-parte vide order dated 21.12.2020 and subsequently the execution petition was disposed off vide impugned order dated 19.04.2021. The petitioner herein was directed to hand over the custody of the minor child to the respondent herein in view of the terms and conditions agreed between the parties. Aggrieved by the said orders dated 21.12.2020 and 19.04.2021, the present revision petition has been filed.

Learned counsel for the petitioner would contend that the Executing Court has gone beyond the prayer made in the application filed by the parties for grant of decree of divorce. It is the argument of the counsel for the petitioner that though in para No.5 of the divorce petition there is a mention regarding the handing over of the minor child to the respondent after six months of the passing of the decree of divorce,

however, in the prayer clause no such prayer has been made and the only prayer was for the grant of mutual consent divorce under Section 13-B of the Hindu Marriage Act, 1956. It is the further contention that the order dated 18.05.2019 passed on the application for amendment/correction is beyond the pleadings. Reliance has been placed upon the following judgments :

1. Jayalakshmi Coelho Vs. Oswaid Joseph Coelho [2001 (2) RCR (Civil) 515
2. Mela Ram Vs. State Bank of India [2000 (2)CLJ (HP) 492]
3. Deepo Vs. Iqbal Singh & Anr. [1994 PLJ 719]
4. Gaurav Nagpal Vs. Sumedha Nagpal [2008 (4) RCR (Civil) 928]
5. Vikram Vir Vohra Vs. Shalini Bhalla [2010 (2) RCR (Civil) 521]
6. Nil Rattan Kundu & Anr. Vs. Abhijit Kundu [2008 (3) RCR (Civil) 936]
7. Nand Lal Vs. Smt. Brij Bala [2013 (3) RCR (Civil) 228]

Per contra, learned counsel for the respondent has contended that the original judgment and decree granting divorce dated 10.01.2019 stood amended vide order dated 18.05.2019 and that none of those orders were ever challenged by the petitioner. According to counsel, the parties had specifically agreed about handing over of the minor child to the respondent herein post six months of the passing of the decree of divorce. Learned counsel has further contended that the petitioner has not stated any cogent reason in the petition for her non-appearance before the Executing

Court. It is further the contention of the counsel that the terms of the compromise were the basis of the grant of decree of divorce between the parties and that the Executing Court was only ensuring compliance of the judgement dated 10.01.2019 as amended vide order dated 18.05.2019.

Heard.

In the present case the petitioner herein has not approached this Court with clean hands. The judgement dated 10.01.2019 passed in the divorce proceedings was amended/corrected vide order dated 18.05.2019 wherein the factum of handing over of the minor child to the respondent herein after six months of the passing of the decree of divorce was incorporated and it was clarified that the said order would form part of the judgment. The petitioner while filing the present revision petition appended only a typed copy of the judgment and decree dated 10.01.2019. Neither the photocopy nor a certified copy of the same was appended with the revision petition and exemption from filing certified copies/photocopies of Annexures P-1 to P-4 was sought. There is no mention in the revision petition about the passing of order dated 18.05.2019. A copy of the order dated 18.05.2019 was placed before this Court by the counsel for the respondent which clearly reveals that not only the application for amendment/correction had an endorsement of No Objection made by the counsel for petitioner herein but her counsel also appeared before the Court on 18.05.2019. This order dated 18.05.2019 having been passed in the presence of the counsel for both the parties has been concealed with an oblique motive of misleading this Court. On repeated queries by this Court, counsel for the petitioner admitted that the said order dated 18.05.2019 has

never been challenged by the petitioner. It is, however, his contention that the same is passed beyond the prayer made in the divorce petition. The said argument is not acceptable as neither the original judgment and decree dated 10.01.2019 granting divorce or the subsequent order dated 18.05.2019 have ever been challenged by the petitioner and are not under challenge in the present revision petition.

Qua the ex-parte execution proceedings as well as the ex-parte impugned order dated 19.04.2021, the counsel for the petitioner is unable to show any cogent ground for the petitioner's non-appearance before the Executing Court except for making a bald statement in the revision petition that her lawyer stated that the matter cannot be taken up due to lockdown imposed in the wake of the Covid-19 Pandemic. The petitioner was admittedly served in the execution proceedings and she also engaged a counsel to contest the same. However, no reason is forthcoming as to why the petitioner or her lawyer did not pursue the matter. Even the present revision petition was filed after almost two months of the passing of the impugned order dated 19.04.2021. The judgments relied upon by the counsel for the petitioner would of no help in view of the fact that the same pertain to power of the Court to carry out corrections in its orders. As noted above, the correction of the original judgment and decree dated 10.01.2019 granting divorce vide order dated 18.05.2019 is not a subject matter of the present proceedings wherein only the ex-parte proceedings and order passed by the Executing Court are under challenge.

In view of the above, especially in view of the conduct of the petitioner of having approached this Court with unclean hands, I do not find

any ground to interfere with the impugned orders order dated 21.12.2020 and 19.04.2021 passed by the Executing Court. There is no error of law or jurisdiction committed by the Executing Court. The present revision petition is dismissed.

Dismissed.

04.01.2023
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO