

CR-4204-2016(O&M)
Date of decision :24.04.2024

...Petitioner

...Respondent

Mr. G.S. Jaswal, Advocate
for the respondent.

ANIL KSHETARPAL, J. (Oral)

2. Learned counsel representing the petitioner contends that the respondent-wife had disclosed the address of Jammu in her petition under Section 125 Cr.P.C. as well as in the sale deed executed by her. He further submits that notice through registered cover was sent but came back with the report that the postman could not contact the respondent. Hence, the Court ordered it's publication and proceeded against *ex parte*. He further submits that the petitioner has re-married and now the application for setting aside *ex parte* decree is not maintainable.

3. *Per contra*, learned counsel representing the respondent submits that at the relevant time, the respondent was residing in Chandigarh and not at Jammu. He submits that the Family Court ordered notice through publication without recording satisfaction with respect to the fact that it is not possible to serve the respondent. He submits that the postman has only reported that the respondent was not available. In such circumstances, it was not appropriate for the Family Court to order publication.

4. This Court has considered the submissions of learned counsel representing the parties.

5. Substituted service of notice through publication can only be resorted to by the Court after recording satisfaction that it is not possible to serve the notice upon the party by any other way generally used. In this case, a registered notice was sent only once, which has already received back unserved. Immediately, the trial Court ordered completion of service through publication, which was not appropriate. Order V Rule 20 of the Code of Civil Procedure, 1908 provides that the recording of satisfaction of the Court to the effect that service of notice through ordinary means is not possible, is necessary. It is not a case where the respondent was avoiding service deliberately or repeated efforts were being made to serve the notice upon him.

6. With reference to the second argument, it is noted that re-marriage of the petitioner after grant of decree of *ex parte* divorce would not debar the respondent to file an application under Order IX Rule 13 of Code of Civil Procedure, 1908 to set aside the *ex parte* decree of divorce. If this argument of the learned counsel representing the petitioner is accepted, the consequences

shall be grave. A party after manipulating the service report will get the *ex parte* decree and thereafter, will re-marry, frustrating the right of the opposite party to file an application to set aside the *ex parte* decree.

7. Keeping in view the aforesaid facts, no ground to interfere is made out.
8. Dismissed.

24.04.2024

neeraj

Whether speaking/reasoned :
Whether Reportable :

(ANIL KSHETARPAL)

JUDGE

Yes
Yes

No
No