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

FAO-2178-2024 (O&M)

Date of Decision: 06.05.2024

AKANKSHA JAIN

...Appellant

Versus

TARUN

...Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARSH BUNGER**

Present: - Mr. Rajesh Gupta, Advocate and
Ms. Manjula Gupta, Advocate
for the appellant.

SUDHIR SINGH, J.**CM-8195-CII-2024**

For the reasons given in the application, the same is allowed and delay of 18 days in re-filing the appeal is condoned, subject to all just exceptions.

CM-8196-CII-2024

For the reasons given in the application, the same is allowed and delay of 248 days in filing the appeal is condoned, subject to all just exceptions.

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The present appeal is directed against the order dated 21.03.2023 passed by the Family Court, Hisar, dismissing an application under Order 9 Rule 9 CPC, filed by the appellant-wife for restoration of the divorce petition, which was dismissed in default on 13.07.2021 and for setting aside the order dated 13.07.2021.

2. The appellant-wife had filed a petition on 29.04.2019 under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') for dissolution of her

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marriage with respondent-husband. The said petition was dismissed in default vide order dated 13.07.2021 due to there being no representation for and on behalf of the appellant. The appellant subsequently filed an application under Order 9 Rule 9 CPC, for restoration of the divorce petition. The said application was dismissed vide order dated 21.03.2023 passed by learned Family Court, as noticed above. The appellant has challenged the said order by way of the present appeal.

3. Learned counsel for the appellant-wife has vehemently contended that in the application under Order 9 Rule 9 CPC, the Family Court was not required to record any finding on the merits of the case. He further submits that it is settled law that while considering the matter for restoration of the cases dismissed in default or for non-prosecution, the Court is to see whether or not the applicant was prevented by a sufficient cause from appearing before the Court. It is further contended that if it is made out that the applicant's absence from the proceedings was not willful, then the Court is to grant the prayer of the applicant for restoration of the main case. It is further submitted that matters must be decided on their merits and not on the technicalities. It is further contended that in the instant case, the trial Court instead of restoring the main petition to its original number so as to facilitate the decision of the main case on its merits, proceeded to dismiss the said application by recording a finding on the merits of the case.

4. We have heard learned counsel for the appellant and have also gone through the impugned orders.



5. A perusal of the record would show that the divorce petition was dismissed in default by the Family Court on 13.07.2021. The said order reads as under:-

“File put up after lunch. None has appeared on behalf of petitioner despite passing over the case several times since morning. It is already 03:30 p.m. Waited sufficiently. No further wait is justifiable. Hence, present petition is hereby dismissed in default.

Consign the file to record.”

6. Thereafter, the appellant filed an application for recalling of the said order and restoration of main petition. The learned Family Court has found that it was admitted by the Special Power of Attorney of the appellant, that the marriage between the parties had already been dissolved by the Court of competent jurisdiction at Canada. It was further found that the appellant-wife was a party to the said proceedings and she did not plead the lack of jurisdiction and rather it was admitted that the parties had been living at Canada for many years. The Family Court has observed that in terms of Section 14 CPC, the Court is to presume that a decree granted by a Foreign Court was pronounced by a Court of competent jurisdiction, unless contrary appears to be on record. It was held by the Family Court that if the appellant had any intention to get her marriage dissolved under the provisions of Hindu Marriage Act, 1955, then there was no occasion for her to obtain a decree from the Court of competent jurisdiction at Canada.

7. The learned counsel appearing for the appellant could not dispute the fact that the marriage between the parties has already been dissolved by the Court at Canada. He could not further point out any illegality in the decree granted by the Court of competent jurisdiction at Canada.

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8. We find that the marriage between the parties stands already dissolved. There is nothing forthcoming on the record that the decree granted by the Court at Canada has been or is being disputed by either of the parties. Thus, the fact remains that the said decree still holds the ground as in terms of Section 14 CPC, a decree granted by the foreign Court has a binding force unless the presumption under the said Section is displaced by proving want of jurisdiction. In the instant case, there being no such plea or argument raised by counsel for the appellant-wife, we find no reason to interfere with the impugned orders passed by the trial Court.

9. Though the plea raised by the appellant-wife in the application under Order 9 Rule 9 CPC, the trial Court was not required to adjudicate the matter on merits, appears to be attractive, yet the fact remains that even if the said application had been allowed, the same would not have served any purpose for the reason that the marriage between the parties has already been dissolved.

10. In view of the above, we do not find any patent illegality or perversity on the impugned orders passed by the learned Family Court.

11. Finding no merit in the present appeal, the same is hereby dismissed.

12. Pending application(s), if any, shall also stand disposed of.

[SUDHIR SINGH]
JUDGE

[HARSH BUNGER]
JUDGE

06.05.2024
Himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No