

2024:PHHC:135586 DB



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

**FAO-4671-2024 (O&M)**

**Date of decision: 01.10.2024**

SATVIR SINGH

...Appellant

Versus

BALWANT KAUR

...Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH  
HON'BLE MR. JUSTICE ALOK JAIN**

Present:- Mr. Saurabh Kaushik, Advocate, for the appellant.

**SUDHIR SINGH, J.**

Challenge in the present appeal is to the order dated 09.07.2024 passed by the Learned Additional, Principal Judge, Family Court, Patiala (for short 'the Family Court'), whereby an application under Order 9 Rule 13 read with Section 151 CPC, filed by the appellant-husband, for setting aside the ex-parte judgment and decree dated 31.08.2019, was dismissed.

2. The appellant (applicant before the learned Family Court), filed the aforesaid application, for setting aside the ex-parte judgment and decree dated 31.08.2019, passed in a petition under Section 13 of the Hindu Marriage Act (for short 'the Act') filed by the respondent-wife for dissolution of the marriage between the parties by a decree of divorce. It was further asserted that in the said petition, the appellant-husband had appeared through counsel, but during the

pendency of the said petition it was disclosed to the appellant-husband that the learned Family Court would hold Court at Camp Court, Nabha and the said case would be entertained in the said Camp Court and the appellant would be informed about the date fixed. There were other cases pending between the parties at Nabha as well. In the second week of September, 2019, when the appellant-husband contacted his counsel, he came to know that the said petition filed by the respondent-wife was decided ex-parte on 31.08.2019. Thereafter, the appellant-husband had applied for the certified copy of the said judgment and decree and after obtaining it, he had filed the aforesaid application seeking setting aside of the ex-parte judgment and decree dated 31.08.2019.

3. Upon notice, the respondent-wife entered appearance and filed her reply to the said application. It was stated that the decree was passed by the Court on 31.08.2019 and the present application was filed on 30.09.2019 and thus, it was barred by time. It was further submitted that during the pendency of the divorce petition, the case was fixed for cross-examination of the respondent-wife, but neither the appellant-husband nor his counsel had appeared for the said purpose and the case was adjourned thrice, but the situation remained the same. Accordingly, the appellant-husband was proceeded as ex-parte. Despite that, the appellant-husband did not appear and the learned Family Court after hearing the arguments, had passed the decree of divorce. The other pleas raised by the appellant-husband were denied.

4. On the basis of pleadings of the parties, the following issues were framed by learned Family Court:-

- “1. Whether there is sufficient reason for setting aside the exparte judgment and decree dated 31.08.2019? OPP
2. Whether the present application is barred by limitation? OPR.
3. Relief.”

5. In evidence, the appellant-husband examined himself as PW-1. On the other hand, respondent-wife examined herself as RW-1, besides tendering documents Ex.R1 to Ex.R12.

6. The learned Family Court, after taking into consideration the rival contentions of the parties and evidence on record, dismissed the application filed by the appellant-husband, as noticed above.

7. Learned counsel appearing for the appellant has vehemently argued that the appellant-husband could not appear before the Court in the petition under Section 13 of the Act filed by the respondent-wife as the said petition was transferred to Camp Court at Nabha and the counsel appearing for the appellant-husband did not inform him about the date fixed in the said case. It is further argued that the application for setting aside the judgment and decree dated 31.08.2019 had been dismissed by the learned Family Court on technical ground.

8. We have heard learned counsel for the appellant and have also gone through the impugned order passed by the learned Family Court.

9. The issue that requires consideration by this Court is whether the impugned order passed by learned Family Court, requires any interference.

10. The learned Family Court found that in the petition under Section 13 of the Act filed by the respondent-wife, the appellant-husband appeared through his counsel Shri Sikander Partap Singh Advocate on 03.08.2017 and the matter was referred to the Mediation Centre for reconciliation. However, the mediation proceedings remained unsuccessful and the appellant filed written statement and the case was fixed for the evidence of the respondent-wife. It was further found that the examination-in-chief of three PWs was recorded on 27.11.2018, and the case was adjourned for the cross-examination of the said witnesses to 29.01.2019, when the case was received by way of transfer in the Court of learned Family Court Patiala, upon creation of the said Court. Thereafter, cross-examination of one witness, namely, Jaswinder Singh was recorded on 05.03.2019 and then the case was adjourned to 09.04.2019 for the remaining PWs. On 09.04.2019, PWs were present, but neither the appellant-husband nor his counsel was available and the last opportunity was granted to the appellant-husband to appear and cross-examine the witness on 14.05.2019. On the said date also, none appeared on behalf of the appellant-husband and after sufficient wait, he was proceeded against ex-parte and the case was adjourned to 20.08.2019 for ex-parte evidence of the respondent-wife. Thereafter, the ex-parte evidence of the respondent-wife was closed on 20.08.2019 and subsequently the

arguments were heard and the petition filed by the respondent-wife was allowed, on 30.08.2019.

11. Learned Family Court did not find any merit in the plea raised by the appellant-husband that the case was transferred to the Camp Court at Nabha. Rather, it was found that the case was never transferred to the Family Camp Court at Nabha at any time and it was transferred to the Family Court on its creation and on several dates, both the parties were present in person and even cross-examination of one of the witnesses of the respondent-wife was also conducted. It was further found that as per the admitted case of the appellant-husband, there were other litigations pending between the parties and if the appellant-husband was being represented in the said cases by a counsel, then it was beyond comprehension as to why the said counsel was not appearing for him in the divorce petition under Section 13 of the Act filed by the respondent-wife. The relevant extract from the order of the learned Family Court, would read as under:-

“17. As per the facts and circumstances of the present case, the applicant was appearing in the proceedings and had filed written statement and had also cross-examined one of the three witnesses examined by petitioner but chosen not to appear thereafter but still the Court had granted him opportunity to appear and cross-examine the witnesses on two dates and thereafter he was proceeded against exparte. Even thereafter, the case was adjourned thrice before passing the exparte judgment and decree on 31.08.2019 but the applicant did not appear. It clearly reveals the conduct of the applicant that he had the knowledge of the petition pending against him U/s 13 HMA and despite passing of exparte order against him on 14.05.2019, he had not appeared in the Court till 30.09.2019. Neither the applicant nor his counsel had

appeared before the Court when the case was adjourned on several occasions for hearing of arguments. It is a sheer case of negligence of applicant and lacks bonafide. The law is well settled as per the judgment referred supra by learned counsel for the respondent that where bonafides are absent, there cannot be a sufficient ground for setting exparte order. So the contention of learned counsel for applicant that he is ready to bear the costs and will undertake to cross-examine the witnesses examined by petitioner on one date is not tenable rather this Court is of the considered view that the litigant cannot be allowed to take the things so casually and then to come forward and state that the decree may be set aside on costs by compensating the other party without showing sufficient cause or plausible explanation. Accordingly, no ground is made out to set aside the exparte judgment and decree dated 31.08.2019 as the applicant has failed to show any sufficient ground for not appearing during hearing of said petition.

18. Keeping in view the reasons recorded above, issues no.1 is decided against the applicant and in favour of respondent. The present application was moved by applicant on 30.09.2019 i.e. within the period of limitation. Thus issue no.2 in favour of applicant and against the respondent.”

12. During the hearing of the arguments before this Court, learned counsel for the appellant-husband could not point out as to why the counsel representing him in the other proceedings had stopped appearing for him in the divorce petition. In order to succeed in the application seeking setting aside of an ex-parte order, the applicant (appellant herein) is required to show that he was prevented by sufficient cause from appearing in the said proceedings and that there was no willful or deliberate conduct in doing so. However, in the instant case, the grounds taken by the appellant-husband were either factually incorrect or not plausible. It is beyond the comprehension of

this Court as to why the proceedings in the divorce petition would be left mid way by the appellant-husband, when the cross-examination of one of the witnesses of the respondent-wife, had already been conducted. The said fact clearly shows that the appellant-husband was not serious in defending the proceedings and rather his attitude and approach both were callous and he did not care for the Court proceedings.

13. In view of the above, we do not find any illegality or perversity in the impugned order passed by the learned Family Court. It could not be pointed out that any evidence has been misread or not taken into consideration by the learned Family Court.

14. No other point has been urged.

15. In view of the above, we do not find any merit in the present appeal and the same is hereby, dismissed.

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

[ SUDHIR SINGH ]  
JUDGE

[ ALOK JAIN ]  
JUDGE

01.10.2024  
Himanshu

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |