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

FAO-5466-2024 (O&M)

Date of decision: November 22, 2024

Suman Devi

....Appellant

versus

Ranjit Singh

....Respondent

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

Present:- Mr. N.P.S. Mann, Advocate for the appellant.

SUDHIR SINGH, J. (ORAL)

CM-20814-CII-2024

For the reasons given in application, the same is allowed and delay of 462 days in filing the appeal is condoned, subject to all just exceptions.

CM-20815-CII-2024

For the reasons stated in application, same is allowed. Documents as Annexures A-1 to A-5 are taken on record, subject to all just exceptions.

Main case (O&M)

Challenge in the present appeal is to the judgment and decree dated 14.07.2023 passed by learned Additional Principal Judge, Family Court, Hoshiarpur (for short the 'Family Court'), whereby, the

petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') filed by the respondent/husband was allowed, and marriage between the parties was dissolved by a decree of divorce on the ground of cruelty.

2. The aforesaid petition had been filed by the respondent-husband, *inter alia*, pleading therein that his marriage with the appellant-wife was solemnized on 01.04.2015 as per Hindu rites and out of the said wedlock, two children were born. It was further alleged that for the initial period of 06 months of the marriage, the behaviour of the appellant-wife was normal, but thereafter, when the respondent went to join his duties in ITBP, she used to quarrel with his parents on trivial issues. She insisted to accompany the respondent wherever he remained posted. The appellant had left the matrimonial home without informing the parents of the respondent. Thereafter, the respondent took the appellant to his place of posting, but her behaviour did not change. Even when the respondent was away on his duty, the appellant used to live at her parental house. The appellant had also filed a false complaint under the Protection of Women from Domestic Violence Act, 2005 alleging therein that the respondent had a liking for her younger sister. In February, 2020, in the absence of the respondent, the appellant left the matrimonial home along with son and went to her parental home in Himachal Pradesh. Efforts were made to bring the appellant back to the matrimonial home, but all in vain. It was further asserted that on 06.02.2021, the appellant, her father, brother and an unidentified person had beaten the respondent without any reason, and forcibly snatched

Aadhar card, ID card of ITBP and ATM card from him. The respondent was not even allowed to meet his son. Terming the aforesaid acts as cruelty, the respondent-husband had sought for a decree of divorce.

3. Upon notice, the appellant-wife did not appear despite service and was proceeded against *ex parte*.

4. In evidence, the respondent-husband appeared as PW1 besides examining Laimber Das as PW2; Ram Parkash as PW3 and Taaro as PW4.

5. The learned Family Court, after considering the contentions of the respondent-husband and evidence on record, allowed the petition filed by the respondent-husband and dissolved the marriage by a decree of divorce on the ground of cruelty, as noticed above.

6. Learned counsel appearing for the appellant-wife has vehemently contended that the appellant could not be served due to COVID-19 pandemic, and accordingly, on 14.01.2022, a substituted service was ordered to be effected. It is further submitted that no evidence was produced by the respondent-husband on record to show as to how and in what matter, the substituted service was effected upon the appellant. It is, thus, argued that the impugned judgment and decree suffers from patent illegality.

7. We have heard learned counsel for the appellant and have also gone through the impugned judgment and decree.

8. The appellant was proceeded as *ex-parte*. Order IX Rule 13 of CPC, stipulates a specific remedy in respect of the ex-parte proceedings. The said provisions would read as under:-

“13. Setting aside decree ex parte against defendant. — In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:

Provided further than no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.”

9. A specific query has been put by this Court to the learned counsel for the appellant if the appellant had filed any application for setting aside of the *ex-parte* judgment and decree, to which the answer is in negative. However, learned counsel for the appellant prays that a liberty may be granted so that the appellant may file an application to the above effect.

10. In view of the above and without expressing any opinion on the merits of the case, the instant appeal is disposed of, with a liberty to the appellant to move an application, before the learned Family Court, under Order IX Rule 13 of CPC seeking setting aside of the impugned *ex*

parte judgment and decree. In case, any such application is filed before the learned Family Court, the same shall be considered and decided, in accordance with law.

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

(SUDHIR SINGH)
JUDGE

(ALOK JAIN)
JUDGE

November 22, 2024

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No