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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-4363-2006 (O&M)

Decided on : 17.11.2025

Susheela Nischal

....Appellant

Versus

Ram Nischal

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present :- Mr. Atul Kaushik, Advocate for
Mr. Ajay Kaushik, Advocate
for the appellant.

Ms. Arzoo Modi, Advocate
for the respondent (Amicus Curiae).

PANKAJ JAIN, J. (ORAL)

1 This appeal has been filed against order dated 27.03.2006 passed by Additional District Judge, Jalandhar, whereby application filed by the respondent under Order IX Rule 13 of the Code of Civil Procedure, 1908 for setting aside *ex-parte* decree of divorce dated 01.06.1988, stands dismissed.

2 Appellant herein was impleaded as respondent in petition filed under Section 13 of the Hindu Marriage Act, 1955 (for short, 'the 1955 Act') titled as *Shiv Kumar Vs. Susheela Nishchal* bearing HMA Case No.31 of 1987. She was ordered to be proceeded *ex-parte*. The proceedings finally culminated in an *ex-parte* decree of divorce dated 01.06.1988.



3 Present application was filed on 22.03.2004 by the appellant seeking setting aside of the *ex-parte* decree. The appellant in the application pleaded that she was never served in the proceedings under Section 13 the 1955 Act and had no knowledge about the pendency of the same. Her address was wrongly mentioned in memo of parties. Though she was residing with her husband at the place of his posting at Secunderabad in the year 1987-1988, however, her address was wrongly mentioned as Civil Lines, Badaum (U.P.). Even the address of U.P. mentioned in the memo of parties was incomplete as neither house number nor street number of Civil Lines, Badaum (U.P.) was disclosed. The service was never effected through registered cover. No effort was made to serve upon the appellant.

4 The appellant came to know about it only on 19.02.2004 when she came to Punjab and was informed about the suit for declaration filed by mother of her husband claiming that she alone is entitled to the terminal benefits of the husband, i.e. Shiv Kumar Nischal-deceased and pendency thereof in the Court of Additional Civil Judge (Senior Division), Jalandhar.

5 The appellant further claimed that she immediately moved an application under Order I Rule 10 CPC in the said suit seeking impleadment as necessary party. The appellant was supplied certified copy of *ex-parte* judgment and decree on 13.03.2004. She accordingly moved the present application on 12.03.2004. The application filed by the appellant has been dismissed disbelieving the version put forth by the appellant with respect to the knowledge of the *ex-parte* judgment and decree.

6 The Trial Court dismissed the application holding that it is difficult to accept that the appellant came to Punjab only on 19.02.2004 and



thereafter contacted a lawyer and filed present application. The appellant failed to place on record any document with regard to her visit to Punjab in February 2004. How she came to know of the suit pending in the Court of Civil Judge regarding declaration filed by her mother-in-law remains unanswered. The Trial Court dismissed the application holding that even if it is assumed that the appellant came to know of *ex-parte* decree on 19.02.2004 or 20.02.2004, the present application filed by the appellant on 22.03.2004 is beyond the period of 30 days as prescribed under the Limitation Act, 1963.

7 Learned counsel for the appellant has assailed the findings recorded by the Courts below. He submits that the Trial Court has totally misdirected itself in recording surmises and conjectures regarding conduct of the appellant without being any basis. He submits it is a case wherein the appellant though was residing with her husband at the place of his postings, but was defrauded by the passing of the present *ex-parte* decree of divorce dated 01.06.1988 abusing the process of law. Husband very well knew that the wife was residing with him yet mentioned wrong and incomplete address of the appellant in memo of parties. He submits that no effort was ever made to effect valid and legal service of the proceedings upon the appellant. Thus, the *ex-parte* decree passed against the appellant cannot be sustained.

8 *Per contra* counsel for the respondent submits that the conduct of the appellant has been rightly noticed by the Court below. *Ex-parte* decree was passed on 01.06.1988. 16 years thereafter present application was filed on 22.03.2004 with an intent to claim the terminal benefits of deceased husband. It is a case wherein the appellant never bothered for the decree of divorce passed against her but turned greedy only after knowing that her



erstwhile husband died. She further submits that the falsity of the plea raised by the appellant is evident from the fact that she contradicted herself. In the pleadings she claimed that she came to know of *ex-parte* proceedings only after she came to Punjab on 19.02.2004. On the other hand, while deposing before the Trial Court she admitted that she was in the knowledge of the proceedings while she was in Secunderabad and it is only thereafter that she came to Punjab to move the present application.

9 I have heard learned counsel for the parties and have gone through the records of the case.

10 In the considered opinion of this Court, the Trial Court ought to have recorded its satisfaction with respect to proper service on the appellant in the proceedings arising out of Section 13 of the 1955 Act. In the entire order, Trial Court has not recorded even a single word with respect to valid and legal service on the appellant in proceedings under Section 13 of the 1955 Act. The divorce petition was instituted wherein the address of the appellant was mentioned as under :-

“Shrimati Susheela Nischal, wife of Shri Shiv Kumar Nischal, daughter of late Shri Thakar Kanwar Singh, resident of Civil Lines, Badaum (UP).”

11 On 27.11.1987, the appellant was ordered to be served for 05.01.1988. On 05.01.1988, the following order was passed :-

Present - Counsel for the petitioner.

The process not issued as the stamps on the Regd. Cover are less affixed. Stamps be made good. The respondent be again served for 08.02.88.

Sd/-



12 Again, the appellant could not be served and was ordered to be served for 08.02.1988 :-

Present - Counsel for the petitioner.

The respondent not served. The respondent be again served for 14.03.88 on filing the P.F. on regd. Letter.

Sd/-

13 On 14.03.1988, appellant was ordered to be served through publication by passing the following order :-

Present - Shri _____Kumar, Advocate.

Proxy of Shri Sanjiv Bansal, Counsel for the petitioner.

The charges deposited late. The respondent be served again for 25.04.88 through publication as before on old PF & old charges.

Sd/-

14 Perusal of the order would reveal that there is no satisfaction recorded by the Trial Court regarding evasion of service by the appellant or any other reason for which she could not be served by way of ordinary mode. The other pertinent feature of the proceedings is that the husband himself never appeared before the Trial Court, yet the marriage was ordered to be annulled by granting decree of divorce under Section 13 of the 1955 Act.

15 In these circumstances, the plea raised by the appellant claiming that all through this period she remained in company of her husband and was residing with him at place of his postings assumes significance. The aforesaid plea taken by the appellant before the Trial Court in the application filed under



Order IX Rule 13 CPC has gone un-rebutted. In the application under Order IX Rule 13 CPC, the specific plea raised by appellant reads as under :-

“3. That the applicant/respondent Santosh Nischal was never served in the above case nor she has any knowledge about the pendency of the case. The address of the applicant was also wrongly mentioned in the head-note of the petition. She was residing with her husband at his place of posting i.e. Secunderbad (Andhra Pradesh) in the year 1987-88 whereas her wrong and incomplete address of Civil lines, Badaum (U.P) was mentioned in the petition without even disclosing the house number or street No. of Civil Lines, Badaum (U.P). All this was done to avoid the appearance of the applicant in the case and to mislead the hon'ble court and to achieve the object of obtaining ex-parte decree against the applicant.

4. That no Registered Cover containing summons nor any summons were ever received by the applicant. Even the substituted service was got effected in a local newspaper which is not in circulation either in Andhra Pradesh or in Utter Pardesh. In this way, the applicant has absolutely no knowledge about the pendency of the above mentioned divorce petition in the predecessor court of the hon'ble court.

5. That the applicant came to know about the above decree when she came to Panjab on 19.2.2004 and was told that her mother-in-law Smt. Santosh Nischal has filed a civil suit for declaration to the effect that she alone is entitled to the pensionary benefits of her son Shiv Kumar Nischal deceased and that case was pending in the court of Smt. Mandeep Punnu, Add Civil Judge (Sr.Div.), Jullundur and was fixed for 19.3.2004. She immediately enquired above that case and found that she has not been impleaded as a party in that suit and only Union of India and others have been made defendants in that suit. The applicant filed application U/O 1 Rule 10 CPC in that court. From the contents of that suit, she came to know about the exparte decree passed in the above mentioned divorce petition. The applicant applied for certified copy of the judgement and decree of the ex-parte decree in question which was supplied to her on. 13-3-20h. Hence the instant application has been filed within 30 days from the date of knowledge of the ex-parte decree in question. The application is therefore, within time.

xxx xxx xxx



7. That the necessity of filing the instant application has arisen because the applicant is claiming the pensionary benefits of her deceased husband Sh. Shiv Kumar Nischal from the authorities concerned whereas the mother of deceased Smt. Santosh Nischal is also claiming the pensionary benefits of the deceased being her mother alleging her to be the sole heir of the deceased and claiming that the deceased has given divorce to the applicant in the year 1988 whereas in fact she was never divorced by her husband during his life time and she remained with him at his place of posting till he died at Secunderbad (AP) on 6.3.2000.

8. That the applicant had strained relations with her mother-in-law Smt. Santosh Nischal who after playing fraud with the applicant as well as the concerned court obtained ex-parte decree against the applicant by forging the signatures of her husband Sh. Shiv Kumar Nischal and by impersonating him. The husband of the applicant never appeared in the case nor his statement was ever recorded by the concerned court before granting the ex-parte decree. On the basis of the statements of Smt. Santosh Nischal, the mother-in-law of the applicant and her tenant, the instant exparte decree has been passed by the concerned court as is clear from the certified copy of the judgement of the case which is attached herewith.”

16 She fully explained her stay with the husband and has produced on record documents Ex.P3 to P9 which somehow were not even referred to by the Trial Court. Once it was before the eyes of the Trial Court as to how the process of law was abused to procure an *ex-parte* decree of divorce despite the fact that the appellant was residing with her husband even after passing of *ex-parte* decree of divorce, the Court ought to have been more pragmatic and should not have taken a hyper-technical view.

17 In view of above, this Court finds that it being a case where in the process of law has been abused and a litigant has been conned, mere delay of three days in filing the application for setting aside *ex-parte* decree of



divorce could not have held the hands of the Court from doing substantive justice.

18 Resultantly, this Court finds that the impugned order cannot be sustained and the same needs to be set aside. *Ex-parte* judgment and decree passed by Additional District Judge, Jalandhar dated 01.06.1988 is hereby ordered to be set aside.

19 Appeal stands allowed.

20 Parties shall appear before the Trial Court on 09.01.2026.

21 Pending miscellaneous application, if any, also stands disposed off.

17.11.2025
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No