

Before Rajan Gupta and Manjari Nehru Kaul, JJ.

SUNITA @ SIMRAN—Appellant

versus

RAJESH KUMAR—Respondent

FAO No.3825 of 2017

July 22, 2019

Civil Procedure Code, 1908—O.9, RI.13 and O.5, RI.17—Hindu Marriage Act, 1955— S.13—High Court Rules and Orders Vol. 4 Chapter 7—Notice through newspaper—Ex-parte divorce decree—Plea of wife that she was served notice through newspaper which did not even have wide circulation in area of her residence—Held, every possible endeavour should be made to serve respondent personally—In case, every attempt to effect personal service in first instance fails, then attempt should be made to effect service through agent or member of family for which process server is duty bound to make repeated efforts for the said purpose, if there is time before date fixed for scrutiny of service, and obtain for each successive attempt at service, attestations of witnesses different from those, who have attested reports of previous attempts—Order V Rules 12 to 16 of the CPC should be insisted upon—Service by affixation under Order V Rule 17 CPC not followed—Matter remanded back for fresh consideration.

Held that, every possible endeavour should be made to serve the respondent personally. In case, every attempt to effect personal service in the first instance fails, then an attempt should be made to effect service through an agent or member of the family for which the process server is duty bound to make repeated efforts for the said purpose, if there is time before the date fixed for scrutiny of service, and obtain for each successive attempt at service, attestations of witnesses different from those, who have attested reports of previous attempts. Suffice it to say that the service as enumerated in Order V Rules 12 to 16 of the CPC should be insisted upon. However, service by affixation as provided in Order V Rule 17 CPC was not followed in the instant case.

(Para 5)

Further held that, present appeal is allowed and the matter is remitted back to the Court below for fresh adjudication of the matter

from the stage where the appellant-wife was ordered to be proceeded against ex parte.

(Para 6)

Ravish Bansal, Advocate
for the appellant.

Achin Gupta, Advocate
for the respondent.

MANJARI NEHRU KAUL, J.

(1) The instant appeal has been preferred by the appellant-wife – Sunita @ Simran against the order dated 04.05.2017 passed by the Family Court, Faridkot vide which application filed under Order 9 Rule 13 Civil Procedure Code (for short 'CPC') was dismissed by the trial Court.

(2) Few facts necessary for adjudication of the instant appeal as pleaded in the application before the learned Court below may be noticed. The marriage between the parties was solemnized on 06.12.2010 as per Hindu rites and ceremonies at Village Ablu Kotli, District Sri Muktsar Sahib. After the marriage, both the parties resided and cohabited as husband and wife and two sons were born out of the said wedlock. As per the averments, the respondent-husband filed a petition under Section 13 of the Hindu Marriage Act (for brevity 'the Act') on 30.08.2014 and the notice qua the same was issued to the appellant-wife both through ordinary process as well as through registered post for 27.10.2014. Since the Presiding Officer was on leave on 27.10.2014, the case was taken up on the next day i.e. 28.10.2014. The appellant-wife claimed that she had not been served for 27.10.2014 and on 28.10.2014, she was ordered to be served through publication. Subsequently, service was effected through one newspaper namely "Chardikala" which did not even have wide circulation in the area of her residence. The appellant-wife was thereafter ordered to be proceeded against ex parte and the matter then adjourned to 23.12.2014 for recording ex parte evidence. Ultimately, on 07.01.2015, an ex parte judgment and decree was passed by the Family Court leading to the dissolution of the marriage between the parties. The appellant-wife pleaded that it was not the case wherein she had been served or had refused to accept any summons. She claimed that the procedure for service through publication as laid down in the CPC had not been followed in the instant case. She pleaded that the learned Family Court gravely erred in concluding that the appellant-wife could not be served

in an ordinary manner and hence, her service be effected through a newspaper. The appellant-wife submitted that she being an illiterate rustic lady could not have been expected to have access to the newspapers much less Chardikala, which admittedly does not have circulation in the area of her residence.

(3) We have heard learned counsel for the appellant and perused the evidence as well as other material available on record.

(4) It would be apposite to refer to the High Court Rules and Orders Vol. 4 Chapter 7, wherein it is envisaged that while sending a judicial notice for publication in a newspaper, the Court shall, in the covering letter require the manager of the newspaper concerned to send an intimation immediately after publication of such notice to the Court as well as to send, under postal certificate, the copy of the paper containing the notice of the party for whose perusal it was intended at the address given in the notice, marking the notice in question with red ink. While sending as proof of compliance with the said order, he shall also be required to attach the postal certificate to his bill when submitting the letter to the Court for payment.

(5) It is very apparent that the procedure as envisaged under the High Court Rules and Orders was not followed in the instant case and the impugned order ordering the party to be proceeded against ex parte was taken in undue haste. As per settled law every possible endeavour should be made to serve the respondent personally. In case, every attempt to effect personal service in the first instance fails, then an attempt should be made to effect service through an agent or member of the family for which the process server is duty bound to make repeated efforts for the said purpose, if there is time before the date fixed for scrutiny of service, and obtain for each successive attempt at service, attestations of witnesses different from those, who have attested reports of previous attempts. Suffice it to say that the service as enumerated in Order V Rules 12 to 16 of the CPC should be insisted upon. However, service by affixation as provided in Order V Rule 17 CPC was not followed in the instant case.

(6) As a sequel to the above discussion, present appeal is allowed and the matter is remitted back to the court below for fresh adjudication of the matter from the stage where the appellant-wife was ordered to be proceeded against ex parte. Parties are directed to appear before the trial Court on 26.08.2019.