

(10) For the reasons aforesaid, the appeal is without any merit and is hereby dismissed. Parties, are however, left to bear their own costs.

H.S.B.

APPELLATE CIVIL

Before M. R. Sharma and S. S. Sidhu, JJ.

BIMLA DEVI,—Appellant.

versus

SAT PAL SHARMA,—Respondent.

First Appeal from Order No. 49-M of 1977

October 12, 1977.

Hindu Marriage Act (XXV of 1955)—Sections 9, 21 and 23—Code of Civil Procedure (V of 1908)—Order 43 Rule 1(d)—High Court Rules and Orders (Punjab and Haryana) Volume V—Chapter 2-A Rule 9—Order refusing to set aside an ex-parte decree—Appeal against such order without depositing printing charges—Whether can be entertained—Appeal without filing certified copy of order—Whether maintainable.

Held, that so far as the cases under the Hindu Marriage Act, 1955 are concerned, Rule 9 of Chapter 2A of the High Court Rules and Orders (Punjab and Haryana) Volume V is of directory nature and it is open to the High Court to dispense with the deposit of typing charges by asking the party concerned to submit typed paper books or to condone the delay in making the deposit of the printing charges and the appeal cannot be dismissed on this score. (Para 4).

Held, that in section 21 of the Act, the important words are “as far as may be” and their use by the Legislature clearly implies that the penal provisions of the Civil Procedure Code shall not be applicable to the proceedings under the Act. It is not necessary for an aggrieved party to file a certified copy of the decree sheet along with the memorandum of appeal arising under the provisions of the Act. The provisions of Order 9 of the Code apply to the proceedings under the Act and this implies that if an ex-parte decree is passed, it is open to the trial Court to set it aside and also open to the appellate court to correct the error of the trial court if the matter is brought before it in appeal. (Para 6).

Bimla Devi v. Sat Pal Sharma (Sharma, J.)

Regular First Appeal from order of the Court of Shri J. K. Goel, Sub Judge, 1st Class, Mansa (Exercising the powers of District Judge under Hindu Marriage Act) dated 13th June, 1977 dismissing the application of the respondent for setting aside the ex parte decree.

Civil Misc. No. 2283-C-II of 77

Application under section 151 CPC read with Section 5 of the Limitation Act, praying that the preliminary objection raised on behalf of respondent may be dismissed and in the alternative the delay in depositing Rs. 100 as printing charges, may be condoned.

Gurbachan Singh, Advocate, for the appellant.

R. N. Narula, Advocate, for the respondent.

JUDGMENT.

M. R. Sharma, J.—(Oral)

(1) The appellant is the wife of the respondent. The respondent filed an application under section 9 of the Hindu Marriage Act, 1955 (hereinafter called the Act) claiming a decree for restitution of conjugal rights on the ground that the appellant had without any reasonable cause denied him her company. It is stated that an *ex parte* decree was passed against the appellant on November 18, 1976. She filed an application before the learned Subordinate Judge, 1st Class, Mansa (Exercising the powers of District Judge under the Hindu Marriage Act), for setting aside the *ex parte* decree under Order 9, Rule 13 of the Civil Procedure Code, on December 15, 1976. That application was dismissed by the trial Court on June 13, 1977. She has come up in appeal against the order, with a prayer that the *ex parte* decree passed against her may be set aside by us in exercise of our appellate jurisdiction.

(2) Mr. R. N. Narula, who appeared in response to notice of motion on Oct. 10, 1971, raised two preliminary objections. Firstly, it was submitted that typing charges of Rs. 100 should have been deposited along with the memo of appeal as laid down by the rules framed by this Court. The second objection was that no appeal was competent against the impugned order as the provisions of Order 43, Rule 1 (d) of the Civil Procedure Code do not apply to the case.

(3) In support of his first contention, Shri Narula, learned counsel for the respondent, placed reliance upon *Jagdish Chandra*

Gupta, v. Union of India and *Jai Ram Dass v. Som Parkash and others* (2). In these two cases, the appellants had not deposited the printing charges along with the memos of appeals in regular First Appeals. The Division Benches, who decided them, held that since a rule had been framed, it had to be complied with. However, in the first mentioned case, the delay in making the deposit of the printing charges was condoned but no such concession was made in the second case mentioned above and the appeal was dismissed as incompetent. Concededly, in the aforementioned two cases, rights to property of the parties were involved which the Courts had to decide in accordance with law. The relative laws applicable to those cases did not cast a special duty on the Courts as is cast by section 23 of the Act in the matter of making it obligatory for the Courts to make an attempt for bringing about a compromise between the parties. Whether a rule should be regarded as mandatory or directory, depends upon the facts and circumstances of each case. When the parties themselves are expected to fight out the litigation, no concession can be shown to them if they fail to observe rules framed by this Court. Under the Act, however, the Courts are called upon to bestow their attention upon a human problem. Whether married spouses should live together or live apart or a decree for divorce should be granted in favour of one against the other, is not their private matter alone. The society as a whole is also interested in a just settlement of these disputes. It is precisely for this reason that the Legislature has cast a duty upon the Courts exercising jurisdiction under this Act to make prior efforts for bringing about a settlement between the parties and also to see that either of the parties to a matrimonial dispute should not suffer handicap because of paucity of funds, for section 24 of the Act lays down that in any proceedings either of the spouses may request the Court for maintenance *pendente lite*. Consequently, the rule under which Mr. R. N. Narula, learned counsel for the respondent, presses that this appeal should be dismissed as incompetent, has to be interpreted in the light of the peculiar provisions of the Act.

(4) The appellant is the wife. She appeared before us and stated that she was not doing any work and was consequently not possessed of any funds. If the rule is strictly construed, as Mr. R. N. Narula desires us to do, the result would be that we shall

(1) A.I.R. 1965 Pb, 129.

(2) 1967 Cur. L.J. 857.

not be able to give any redress to the appellant even though an *ex parte* decree had been obtained against her by adopting questionable means. That interpretation would certainly go against the well-settled principles of rules of procedure as they are meant for advancing the interest of justice instead of retarding them. We accordingly hold that so far as the cases under the Act are concerned, this rule is of directory nature and it is open to this Court either to dispense with the deposit of typing charges by asking the party concerned to submit typed paper books or to condone the delay in making the deposit of these charges. It is not disputed that the appellant did deposit this amount at a later stage. We accordingly allow C.M. 2283 C-II of 77 condone the delay in depositing these charges and hold that the appeal cannot be dismissed on this score.

(5) For the second preliminary objection, Mr. R. N. Narula learned counsel for the respondent, placed reliance on *Daljit Singh Piara Singh v. Smt. Shamsher Kaur w/o Daljit Singh*, (3), in which it was held that filing of a certified copy of the decree sheet was not a condition precedent for entertainment of appeal under the Act. Since under Order 41, Rule 1 of the Civil Procedure Code, the filing of such a copy is insisted upon before an appeal is entertained on merits, it is argued that it should be held that in spite of the clear language of Order 43, Rule 1(d) of the Civil Procedure Code, where a Court in exercise of jurisdiction under the Act declines to set aside an *ex-parte* decree, no appeal is competent.

(6) After hearing the learned counsel for the parties, we are of the view that this preliminary objection raised by Mr. R. N. Narula, learned counsel for the respondent, is also of no avail to him. Section 21 of the Act reads as under:—

“Subject to the other provisions contained in this Act and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908”.

The important words are “as far as may be” and their use by the Legislature clearly implies that the penal provisions of the Civil Procedure Code shall not be applicable to the proceedings under Act. In this view of the matter, the Division Bench rightly held in *Daljit Singh Piara Singh's case* (supra) that it was not necessary for an

aggrieved party to file a certified copy of the decree sheet along with the memorandum of appeal arising under the provisions of the Act. The matter is not *res integra*. In *Smt. Manjit Kaur v. Gurdial Singh Gangawala*, (4), decided by Chief Justice R. S. Narula, it was held that provisions of Order 9 of Civil Procedure Code did apply to the proceedings under the Act. This implies that if an *ex-parte* decree is passed, it is open to the trial Court to set it aside and also open to the appellate Court to correct the error of the learned trial Court if the matter is brought before it in appeal.

(7) Coming to the merits of the case, Mr. R. N. Narula, has argued that the appellant had knowledge of the date of hearing and for that reason no indulgence should be shown to her. In support of his contention, he has drawn our attention to the statement made by R. W. 3, Shri Kali Ram, Advocate, who had stated that he had requested the Chief Judicial Magistrate, Sangrur, to inform the appellant about the date of hearing in this case. We are certainly not impressed with the statement of this witness but for the sake of propriety we do not wish to make any observations on the evidence given by him. The fact, however, remains that the Chief Judicial Magistrate, Sangrur, whom he requested that the appellant should be informed about the date of hearing, has not been produced as a witness. Consequently, we draw a presumption against the respondent that had the Chief Judicial Magistrate been produced as a witness, he would have deposed against him. The other evidence led in the case by both the parties practically neutralises itself. In view of this fact, we are inclined to set aside this *ex-parte* decree because even if the respondent were to pray for a decree of divorce on the basis of this decree, the Court hearing the petition under section 13 of the Act would have to go into the circumstances under which this *ex-parte* decree was passed. The other reason which impels us to take this action is that in a dispute between a husband and a wife no spouse should be allowed to have a snap judgment against the other. If the matter is re-opened and the parties are allowed to lead evidence, the decision then given by the Court would at least morally satisfy the party concerned of his or her own wrong. In that event, the party concerned may of its own accord try to undo the wrong committed by it.

(8) For the reasons mentioned above, we allow this appeal, set aside the *ex-parte* decree passed by the learned Subordinate Judge

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(Sandhawalia, J.)

1st Class, Mansa (Exercising the powers of District Judge under the Hindu Marriage Act) and direct him to re-decide the matter in accordance with law. The parties through their counsel are directed to appear before the trial Court on October 28, 1977. No costs. The records should be despatched to the trial Court posthaste.

H. S. B.

FULL BENCH

MISCELLANEOUS CIVIL

Before A. D. Koshal, S. S. Sandhawalia, D. S. Tewatia, Bhopinder Singh Dhillon and Surinder Singh, JJ.

DALJIT SINGH MINHAS ETC.,—Petitioners.

versus

THE STATE OF PUNJAB and others,—Respondents.

Civil Writ Petition No. 1553 of 1977.

24th October, 1977.

Constitution of India 1950—Article 16—Punjab Educational Service Class III School Cadre Rules 1955—Rules 2 (e) and 7 (i)—Employment Exchanges (Compulsory Notification of Vacancies) Act 1959—Sections 2 (d) and 10—Direct recruitment to a post—Mode and manner of inviting applications therefor—Advertisement in the Press—Whether a requirement of Article 16 or the Rules—Normal channels of selection taking time and ad hoc employees appointed through Regional Employment Exchanges—Services of such employees having one year of service regularised—Candidates selected by Departmental Recruitment Committee not appointed—Such regularisation—Whether hit by Article 16—Selection by the Committee—Whether confers a right to appointment—Employment Exchanges—Whether provide a publicised medium for purposes of recruitment.

Held, that it is not the requirement of the Constitution of India 1950 under Article 16 that for direct recruitment to an office under the State, there must be an advertisement in the public press so as to reach every conceivable candidate in the country. Indeed such a requirement is both doctrinaire and impossible of actual implementation. Nor is there anything in the Punjab Educational Service Class III School Cadre Rules 1955 which may warrant a similar requirement. This, however, is not to be understood that appointments to public office are to be made in a cloistered manner. What is clearly implied is that the mode and manner of giving adequate publicity for the posts to be filled either to the public at large or to the class or source to which recruitment may be confined, has