

*Before Ram Chand Gupta, J.*

**RAM RATTAN,—Petitioner**

*versus*

**SUNITA KUMAR ALIAS PINKI,—Respondents**

**Civil Revision No. 959 of 2004**

18th April, 2011

*Hindu Marriage Act, 1955—S. 13—Code of Civil Procedure, 1908—O. 9 Rl. 13—Exparte decree in favour of husband—Wife proving that she was not duly served and that exparte judgment and decree came to her knowledge when copy of same was produced by husband in police station—Application for setting aside exparte judgment and decree within thirty days of acquiring knowledge, hence, application is within limitation—Subsequent marriage of husband would automatically be void—No illegality or material irregularity committed by trial Court in passing impugned order—No interference—Petition dismissed.*

*Held*, that so far as effecting of service by way of publication in the newspaper 'Jansatta' is concerned, petitioner-husband has also failed to prove that any copy of the said newspaper was sent to the house of parents of respondent-wife by registered post by the newspaper authorities. There is also no evidence that said newspaper was having circulation in the said area. Hence, taking from any angle, it cannot be said that proper service of summons was effected upon respondent-wife before she was proceeded *ex parte* by learned trial Court.

(Para 16)

*Further held*, that respondent-wife has been able to show that factum of divorce was not in her knowledge and that she came to know about the said exparte decree of divorce for the first time when copy of the same was produced by petitioner-husband in the police station. Immediately, thereafter, she applied for copy of the same and filed application under Order 9 Rule 13 of the Code for setting aside exparte judgment and decree. Hence, the application is within limitation from the date of knowledge of the exparte judgment and decree passed against her at the instance of petitioner-husband.

(Paras 18 & 19)

*Held*, that the respondent-wife has been able to prove that she was not duly served in this case and that *ex parte* judgment and decree came to his knowledge for the first time when copy of the same was produced by her husband in the police station and she filed application for setting aside *ex parte* judgment and decree within thirty days of acquiring the knowledge and hence, application is within limitation and in view of these facts, subsequent marriage of petitioner-husband with Smt. Poonam Sharma would automatically be void. Hence, it cannot be said that any illegality or material irregularity has been committed by learned Additional District Judge, Ropar, in passing the impugned order or that a grave injustice or gross failure of justice has occasioned thereby, warranting interference by this Court.

(Paras 21 & 22)

R. N. Moudgil, Advocate, *for the petitioner.*

Vijay Lath, Advocate and Naveen Sharma, Advocate, *for the respondent.*

**RAM CHAND GUPTA, J.**

(1) The present revision petition has been filed under Section 115 of the Code of Civil Procedure (hereinafter to be referred as 'the Code') against order dated 20th January, 2004, passed by learned Additional District Judge, Ropar, *vide* which applications under Order 9 Rule 13 of the Code filed by respondent-wife was accepted and *ex parte* judgment and decree for divorce under Section 13 of the Hindu Marriage Act (hereinafter to be referred as 'the Act') passed in favour of the petitioner-husband and against respondent-wife by learned Additional District Judge, Ropar, dated 7th August, 1991 and *ex parte* order dated 19th July, 1991 were set aside.

(2) I have heard learned counsel for the parties and have gone through the whole record carefully.

(3) Brief facts are that a petition under Section 13 of the Act for dissolution of marriage by way of decree of divorce was filed by petitioner-husband—Ram Rattan against respondent-wife-Sunita Kumari @ Pinki on 12th April, 1990. It has been pleaded that marriage between the parties

was solemnised on 25th June, 1981 at Village Bar Gaon, Tehsil Ghumarbin, Post Office Naghiar, District Bilaspur, as per Hindu Rites and Customs. After the marriage, parties lived together at Village Mataur, Tehsil Anandpur Sahib, District Ropar. It has been further averred that respondent-wife compelled the petitioner to live separate from his old parents and that she is of quarrelsome nature and used to misbehave with petitioner and she left the matrimonial home in January 1983, without any cause, in the absence of petitioner and refused to return. It is further contended the petitioner visited the house of his in-laws and requested the parents of respondent to send her with him and, however, they refused and rather they insisted that he should transfer his land in the name of his wife and only then she would be sent to the matrimonial home. He also convened Panchayat and has visited the village of parents of the respondent and, however, parents of respondent refused to send her with him and hence, he filed the petition for divorce.

(4) Notice of petition was sent to respondent-wife at the address of her parents, however, summons were received unserved with the report of refusal and thereafter service was effected by way of publication in 'Jansatta' and on the basis of that respondent-wife was proceeded as *ex parte* and *ex parte* decree was passed in favour of petitioner-husband. After coming to know about passing of *ex parte* decree in favour of petitioner-husband, respondent-wife filed application under Order 9 Rule 13 of the Code for setting aside the *ex parte* judgment and decree dated 7th August, 1991 and *ex parte* order dated 19th July, 1991.

(5) It has been alleged by respondent-wife in the application that she used to reside in village Mataur and used to cultivate the land of her husband as her husband had left village Mataur and started living at Nangal and that she never refused to receive any summons and that at that time she was also not residing with her parents in village Bar Gaon. Further plea has been taken that when she was cultivating the land for crop of 'Hari-2001'; her husband restrained her from cultivating the land and the matter was reported to the police and that it was in the police station that it was disclosed by petitioner-husband that he already obtained *ex parte* decree of divorce dated 7th August, 1991 against her and hence, on the very next day, i.e., 5th December, 2001, she applied for the certified copy of the judgment and decree dated 7th August, 1991 and received the same on

11th December, 2001 and thereafter she filed the present application for setting aside *ex parte* proceedings and *ex parte* judgment and decree of divorce filed against her on 18th December, 2001.

(6) Petitioner-husband contested the said application on the ground that the same is time barred. Plea has also been taken that respondent-wife left the matrimonial home in the year 1983 of her own and started living with her parents at Village Bar Gaon and that summons were duly sent on the said address and on the refusal of the wife to receive the summons, service was effected by publication. Further plea has been taken that after passing of *ex parte* decree of divorce in his favour on 7th August 1991, he solemnised second marriage with Smt. Poonam Sharma in the year 1993 and since then he has been residing with Poonam Sharma at village Kathera Nangal. However, he admitted that an application was filed by respondent-wife to the police and that he was called in the police station where he submitted copy of judgment and decree dated 7th August, 1991 before the police in the presence of other respectable persons of the village. However, it is denied that respondent came to know about judgment and decree of divorce for the first time when he submitted copy of the same in the police station.

(7) On the pleadings of the parties, the following issues were framed by learned trial Court for adjudication :—

- “1. Whether there are sufficient grounds for condonation of delay ? OPA
2. Whether there are sufficient grounds for setting aside the *ex parte* judgment and decree dated 7th August, 1991 ? OPA
3. Relief.”

(8) Parties were called upon to adduce evidence in support of their respective contentions. Respondent-wife appeared as her own witness as AW1 and examined Sohan Singh, resident of Village Mataur as AW2, and her sister Dhano Devi, who was married with brother of petitioner at the same time and who also used to reside in village Mataur as AW3. On the other hand, petitioner appeared as his own witness as RW1 and examined Thakar Dass, Process Server as RW2 and an official from the office of Election Office, as RW 3.

(9) It has been contended by learned counsel for the petitioner-husband that respondent-wife was duly served in proceeding under Section 13 of the Act, by way of substituted service and that moreover factum of decree of divorce passed in favour of petitioner-husband and against respondent-wife came to her knowledge long ago. It has been argued that in application filed under Section 125 Cr. P.C., respondent-wife gave address of her parents. It is further contended that in application filed under Section 127 Cr.P.C. petitioner had disclosed about the *ex parte* decree of divorce obtained by him. It is further contended that petitioner also performed second marriage in the year 1993 with Smt. Poonam Sharma, after about two years of the decree of divorce passed in his favour and hence, it is contended that application filed under Order 9 Rule 13 of the Code for setting aside *ex parte* judgment and decree and *ex parte* order, after petitioner performed second marriage with Smt. Poonam Sharma, has become infructuous. He has also placed reliance upon **Babita Laul versus Vijay Laul (1)**, and **Surendra Kumar versus Kiran Devi (2)**.

(10) On the other hand, it has been contended by learned counsel for the respondent-wife that she was never served in proceedings under Section 127 of the Code of Criminal Procedure (hereinafter to be referred as the Cr. P.C.) initiated by petitioner-husband for modification in the order of maintenance and that she never appeared in those proceedings and hence, it cannot be said that factum regarding *ex parte* judgment and decree against her came to her knowledge during those proceedings. It is further contended that in the application under Section 125 Cr. P.C., She gave address of her parents as sometimes she used to reside in village Mataur and sometimes with her parents and hence, she gave address of her parents. It is further contended that moreover respondent-wife was also not duly served at the address of her parents and that she never refused to accept the summons and even copy of newspaper also not sent at the address of her parents and hence, it is contended that she could file application for setting aside *ex parte* judgment and decree within thirty days of the date when the factum of passing of *ex parte* decree against her came to her knowledge and hence, it is contended that application was filed within

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(1) 2009 (4) PLR 35

(2) AIR 1997 Rajasthan 63

limitation from the date of knowledge and hence, it is contended that the application has not become infructuous on the ground that second marriage was contracted by petitioner-husband. It is further contended that rather fraud has been committed upon respondent-wife by petitioner-husband by concealing the factum of alleged *ex parte* decree of divorce obtained by him and by re-marrying and starting living at village Kahtera Nangal, whereas, respondent-wife has been residing in the ancestral village of her husband, i.e., in village Mataur and continuing cultivating the land.

(11) Law has been well settled that in a case where defendant was duly served, application for setting *ex parte* decree is to be filed within thirty days therefrom and, however, in case where defendant was not duly served, such an application could be filed within the aforesaid period commencing from the date of knowledge of the *ex parte* decree. On the point reliance has been placed upon **Gauhati University versus Niharlal Bhattacharjee (3)**, wherein Hon'ble Apex Court observed as under :

- “6. It would thus be seen that when the summons is proved to be duly served, then the limitation begins to run under Article 123 from the date of decree. But when the summons, though served, but the defendant had not had due time, clause (c) Rule 6 of Order 9, envisages further notice to be given, fixing a future date and the court shall direct notice of such date to be given to the defendant. In this case, admittedly, no such step had been taken.
7. It is seen that though notice was served on the appellant on May 28, 1990 and the date fixed for appearance was May 29, 1990, there was not time much less sufficient, to reach the court for appearance on that date. While adjourning the suit to July 19, 1990, the said date was not communicated to the appellant, as envisaged in clause (e) of Rule 6 of Order.
8. Thus, the summons was not duly served. The limitation began to run only when appellant had knowledge of the *ex parte* decree. From the date of the knowledge, admittedly, the application was filed within 30 days. The courts below had not adverted to this aspect from this perspective.”

(12) Hence, first it is to be seen as to whether respondent-wife was duly served in proceedings initiated by petitioner-husband under Section 13 of the Act against her.

(13) It is admitted case of the petitioner that he had sent summons at the address of parents of respondent-wife. Learned counsel for the petitioner-husband has argued that a petition under Section 125 Cr. P.C. was filed by respondent-wife on 16th November, 1989 and in the said application, she had herself given her address as that of her parents house. He has also contended that she also filed an application for enhancement of maintenance and in the said application as well, she had given address of her parents village only. Hence, even if this plea is accepted that at the relevant time, respondent-wife was residing with her parents, it is to be seen as to whether she was properly served at the address of her parents.

(14) She was not personally served. As per report of the Process Server-Thakar Dass, RW2, she refused to accept the summons. However, Thakar Dass, Process Server had deposed that one Sant Ram had identified Sunita Kumari. Further he deposed that Sant Ram is not any Panch, Sarpanch or Lambardar of the Village and that he was not known to him earlier and he even did not know the village of Sant Ram. He also deposed that Sunita Kumari was not personally know to him. He deposed that he had never met Sant Ram before. He had not called any Panch Sarpanch, Lambardar or Chowkidar of the Village to identify Sunita Kumari. He did not verify from the respectable persons of the village about Sunita Kumari and about Sant Ram. He did not know about house number of Sunita Kumari. He also did not know about Mohalla of Sunita Kumari. He also did not affix any copy of the summons and the petition at the residence of Sunita Kumari. Hence, in view of these facts, no reliance can be placed upon report of Thakar Dass, Process Server, that Sunita Kumari refused to accept the summons, when he allegedly delivered the same to her. Rather, petitioner Ram Rattan in the cross-examination had admitted that he had taken the dasti summons and went to village Ghumarbin alongwith an official of the Court to effect the service. Hence, it shows that report of refusal on the summons was falsely procured by petitioner-husband.

(15) Learned trial Court on the basis of said report of refusal ordered for effecting substituted service by beat of drum in the village. However, the said mode for effecting service upon respondent-wife was also not adopted and no copy of the summons and the petition was also affixed on the residential home of the wife.

(16) So far as effecting of service by way of publication in the newspaper 'Jansatta' is concerned, petitioner-husband has also failed to prove that any copy of the said newspaper was sent to the house of parents of respondent-wife by registered post by the newspaper authorities. There is also no evidence that said newspaper was having circulation in the said area. Hence, taking from any angle, it cannot be said that proper service of summons was effected upon respondent-wife before she was proceeded *ex parte* by learned trial Court.

(17) So far as the other aspect of the matter that the factum of *ex parte* decree of divorce came to the knowledge of respondent-wife when petitioner-husband filed petition under Section 127 Cr. P.C. to cancel order of maintenance, dated 12th September, 1991 is concerned, petitioner-husband failed to prove that respondent-wife was duly served in the said application. Though some Lawyer appeared on her behalf in the said petition and the case was fixed for consideration and however, respondent-wife never appeared and the said petition was also got dismissed in default by petitioner-husband. It was for petitioner-husband to prove that respondent-wife was duly served in that petition and that she engaged a counsel, who appeared on her behalf. However, petitioner-husband has failed to prove the said fact. No vakalatnama allegedly signed by respondent-wife in favour of counsel, who allegedly appeared on her behalf has also been proved. Hence, it cannot be said that factum of *ex parte* decree obtained against her by petitioner-husband came to her knowledge from the said application under Section 127 Cr. P.C., filed by petitioner-husband against her.

(18) There is another aspect of this case as well. Admittedly, petitioner-husband contested the application under Section 125 Cr. P.C. for maintenance filed by respondent-wife against him. *Ex parte* decree of divorce is dated 7th August, 1991. Application under Section 125 Cr. P.C.



was decided on 12th September, 1991, Ex-A1. However, during the pendency of the said application, petitioner-husband did not disclose the pendency of the divorce proceedings. He also filed revision petition against order dated 12th September, 1991 and the same was decided on 28th April, 1992, Ex. A2, and in the revision petition as well, petitioner-husband never disclosed the factum of *ex parte* decree taken by him. He also filed second revision petition Ex. A3, before this Court, which was also dismissed *vide* order dated 16th December, 1992 and even at that time, he did not disclose about the *ex parte* decree obtained by him. He has admitted that he had produced copy of *ex parte* judgment and decree of divorce for the first time in the police Station Mataur, where he was called on the complaint of respondent-wife. Plea of respondent-wife is also duly corroborated by a witness of ancestral village of petitioner-husband Sohan Sing AW2. Petitioner-husband has admitted in the cross-examination that he belongs to his village and he is known to him. He has also deposed that it was not in their knowledge or in the village that petitioner had obtained divorce and had re-married. AW3 sister of respondent-wife, who is allegedly married to brother of petitioner and also living in Village Mataur also deposed that factum of divorce was not in her knowledge and that the same came of their knowledge when copy of divorce was produced by petitioner-husband in the police station. Hence, respondent-wife has been able to show that factum of divorce was not in her knowledge and that she came to know about the said *ex parte* decree of divorce for the first time when copy of the same was produced by petitioner-husband in the police station. Immediately, thereafter, she applied for copy of the same and filed application under Order 9 Rule 13 of the Code for setting aside *ex parte* judgment and decree.

(19) Hence, the application is within limitations from the date of knowledge of the *ex parte* judgment and decree passed against her at the instance of petitioner-husband.

(20) Hence, in view of these facts, **Babita Laul's case** and **Surender Kumar's case** (supra) on which reliance has been placed on behalf of the petitioner are of no help to him. In those cases, it could not be proved that respondent-wife was having no knowledge about passing

*ex parte* judgment and *ex parte* decree against her and as respondent-husband, and contracted the second marriage, after expiry of period of limitation it was observed that application under Order 9 Rule 13 of the Code, after expiry of period of limitation, had become infructuous. Rather in another judgment rendered by this Court in **Prem Parkash Gupta versus Asha Rani**, 1991(1) PLR 282, it was observed that if wife is not duly served in the petition filed by husband for divorce, she could approach the Court within thirty days from her gaining knowledge of *ex parte* decree and that even mere knowledge is not enough as she is required to have complete knowledge regarding the grounds on which such petition was filed and ultimately decreed. It was further observed that the moment *ex parte* decree of divorce is set aside, the second marriage would automatically become void. On the same point, reliance has been placed upon **Dr. Amandeep versus Principal Judge, Family Court, Dehradun and another**, (4).

(21) However, in the present case, respondent-wife has been able to prove that she was not duly served in this case and that *ex parte* judgment and decree came to his knowledge for the first time when copy of the same was produced by her husband in the police station and she filed application for setting aside *ex parte* judgment and decree within thirty days of acquiring the knowledge and hence, application is within limitation and in view of these facts, subsequent marriage of petitioner-husband with Smt. Poonam Sharma would automatically be void.

(22) Hence, in view of these facts, it cannot be said that any illegality or material irregularity has been committed by learned Additional District Judge, Ropar, in passing the impugned order or that a grave injustice or gross failure of justice has occasioned thereby, warranting interference by this Court.

(23) Hence, the present revision petition is, hereby, dismissed being devoid of any merit.

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**R.N.R.**