

*Before Kuldip Singh, J.*

**MADHU WIFE OF ARYAVIR GULIA — Appellant**

*versus*

**ARYAVIR GULIA SON OF RAGHAVAN SARAN GULIA —**

*Respondent*

**FAO No. 5310 of 2009**

July 24, 2015

*Code of Civil Procedure, 1908 — Order 9 RI. 13 — Hindu Marriage Act, 1955 — S. 13(1)(ia) — Setting aside ex parte judgment — Application dismissed — Husband filed Divorce petition by furnishing the wrong address of wife — Summons issued received back saying respondent not found — Respondent still appeared on next date and filed written statement — Then proceeded ex parte — Petition decreed in six months — It appears that husband is in hurry to obtain ex parte decree — Considerable difference in signatures on written statement and those on power of attorney — Collusiveness is apparent — Judgment set aside — Appeal allowed.*

*Held*, that the science of handwriting expert is not a perfect science. Therefore, the strength has to be drawn from the attending circumstances also. In this case admittedly, the wife had sued the husband under Section 498-A IPC. She had been filling applications before the Women Cell for taking criminal action against her husband. Therefore the fact remains the wife will not meekly give in to the desire of the husband to have divorce.

(Para 8)

*Further Held* that this Court has itself compared the standard signatures of Madhu with the disputed signatures on the written statement and Power of Attorney filed by one Shri O.K. Kaushik, Advocate and finds considerable difference in the signatures, particularly letters “M” and “d”.

(Para 12)

Manoj Bajaj, Advocate,  
*for the appellant.*

Rakesh Nehra, Advocate  
for respondent.

**KULDIP SINGH J. (ORAL)**

(1) Appellant has filed this appeal against order dated 24.4.2009, passed by the learned Additional District Judge, Jhajjar, vide which her application under Order 9 Rule 13 of the Civil procedure code, 1908 (in short 'CPC') for setting aside of the ex-parte judgment and divorce decree dated 13.8.2002, passed by the then learned Additional District judge, Jhajjar, was dismissed.

(2) The brief controversy involved in the present case is that on 12.2.2002, Arya Vir Gulia (present respondent) filed a petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955, against his wife Madhu (present appellant) for grant of divorce. On 13.2.2002 the notice was issued to the appellant/ respondent (wife) for 19.3.2002. The said notice was received back with the report that appellant/respondent (wife) could not be found at the given address. Therefore, 'Ward Number' should be mentioned in the notice. However, it comes out from the file that appellant/respondent (wife) allegedly appeared through Shri O.K Kaushik, Advocate, on 19.3.2002 and filed the written statement on the same day, wherein the marriage was admitted and all the allegations were simply mentioned as incorrect and denied. The case was then adjourned to 16.4.2002 for replication and issues. On date, the local bar Association was on strike. The case was therefore adjourned to 14.5.2002 for replication and issues and the parties were directed to appear for re-conciliation. However, on 14.5.2002, none appeared for the appellant/respondent (wife) and, therefore, appellant/respondent (wife) was proceeded against ex-parte. The issues were framed and ex-parte evidence was summoned for 13.8.2002, on which date, three witnesses were examined by the petitioner/respondent (husband) and the evidence was closed. The arguments were heard on the same day and the ex-parte judgment was also pronounced on the same day.

(3) It comes out that thereafter appellant/respondent (wife) filed an application on 12.12.2002 under Order 9 Rule 13 CPC for setting aside the ex-parte judgment and divorce decree dated 13.8.2002. It was claimed in the application that she had not engaged any counsel to appear on her behalf and that if any signatures of the applicant on the power of attorney and application are found, these are fictitious and the result of fraud. She further stated that no summons were ever received by her. She claimed that she come to know about the ex-parte judgment and divorce decree when she moved a complaint against her husband before the District Commissioner, Delhi, which was forwarded to crime

Branch, New Delhi, for necessary action on 12.11.2002, where the husband produced the ex-parte judgment and divorce decree. Thereafter, she consulted the counsel and filed the application.

(4) The application was contested by the respondent (husband), wherein the appellant/respondent (wife) had appeared in the proceedings and that she was aware about the proceedings. She herself engaged the counsel and after passing of the judgment, she was aware of the passing of the decree. The lower court framed the following issues:-

- i) Whether there is a just reason to set-aside the ex parte order dated 13.8.2002, if so to what effect, on the grounds as alleged? OPP
- ii) Whether the application is time barred? OPD
- iii) Whether the application is not maintainable in the present form? OPD
- iv) Whether the applicant is liable to be stopped from filing the present application by her own act and conduct? OPD
- v) Relief.”

(5) Issue No. 1 was decided against present appellant (wife) Issues No. 2,3 and 4 were taken Up together and were also decided against the present appellant (wife). Consequently, the application was dismissed.

(6) I have heard learned counsel for the appellant, learned counsel for the respondent and have also carefully gone through the file.

(7) Before the lower Court both the parties examined handwriting expert, who gave their opinion in favour of the respective parties. The lower Court laid much emphasis on the fact that Shri O.K. Kaushik, a senior counsel was engaged by the respondent (wife) The said counsel enjoyed respectable position in the bar and there is no reason that why he will depose falsely against the applicant as he is not going to gain anything. Therefore, there is no reason to discard the testimony of Shri O.K. Kaushik (RW3), who had put in appearance on behalf of present appellant/respondent (wife) in main petition. The learned Additional District judge, Jhajjar, also made observation that in the petition under Section 13 of the Hindu Marriage Act, 1955, the

address is mentioned as 'resident of j-II, Kishangarh, Delhi.' However, there is some overwriting apparent over Kishangarh on the application. The learned Additional District judge, Jhajjar, also observed that that from the bare comparison of signatures of applicant on power of attorney and written statement with specimen signatures of the applicant, he is of the considered view that these are of the one and same person.

(8) I am of the view that the learned Additional District judge, Jhajjar, failed to properly appreciate the evidence. He also failed to properly appreciate the documents on file. The science of handwriting is not a perfect science. Therefore the strength has to be drawn from the attending circumstances also. In this case, admittedly, the wife had sued the husband under Section 498-A IPC. She had been filling applications before the Women cell for taking criminal action against her husband. Therefore, the fact remains that the wife will not meekly give in to the desire of the husband to have divorce.

(9) The observation of the lower Court that the address 'J-II' was given in the petition for divorce is also factually incorrect. A perusal of original file summoned by this court shows that the address of wife is given as 'Madhu wife of Arya Vir Gulia and daughter of Shiv Raj, resident of J-11. This was a clever move. The summons issued to the wife were received back with the report that the address is incomplete and 'ward No. 'should b Rule e given. In the summons also, the address given is 'J-11' and not 'J-11; AS 'g-Therefore, apparently, the husband had given a wrong and deceptive address of the wife.

(10) Now, the petition would show that it does not bear any date. The said address is repeated in the body of the petition also. The petition also does not bear any date of verification of the pleadings. The verification clause shows that it was verified that the contents of 'written statement' are true and correct to the best of knowledge and belief, whereas it was a petition and not a written statement. However, the affidavit attached with the petition shows that it is undated and not attested by any authority.

(11) Now, Coming to the written statement, a perusal; of the same shows that in the written statement, the first three paras are admitted to be correct and the other paras are simply denied without taking any further plea. If Mr. O.K. Kaushik was a senior counsel, then in case where there are allegations of desertion or cruelty, such a written statement could not have been filed as simply denied, which in

legal parley would mean that the facts are admitted. The written statement again is undated. It bears the address of respondent as 'G-11, Kishan Garh, Delhi' and not 'J-II, Kishangarh, Delhi'. The power of attorney also bears the alleged signatures of Madhu. The said senior counsel, who in the opinion of the lower court is a respectable in the Bar, did not appear on the next date and allowed the case to be proceeded against ex-parte. On the next date, the entire evidence was produced. The arguments were heard and the case was disposed of on the same day. During the proceedings on application under order CPC, the said Shri O.K. Kaushik appeared as RW3 and identified the signatures of madhu. However, he never identified Madhu in the Court to be same lady, who had approached him and who had signed the power of attorney and on whose behalf, he had filed the written statement. In the application, the wife has given her address as 'resident of J-III, Krishangarh, Delhi. In any way, the address was found to be wrong by process Server. If wrong address was given, then it is a mystery as to how the wife, who had been suing criminal remedy against her husband, come to know about pendency of petition and quickly filed such type of written statement on first date of hearing itself and then slipped away from the proceedings . This is contrary to the normal behavior of such person.

(12) I also find that the observations of the learned Additional District Judge that the signatures of Madhu on written statement tally with her standard signatures are also factually incorrect. This Court has it self compared the standard signatures of Madhu with the disputed signatures on the written statement and power of Attorney filed by one Shri O.K. Kaushik, Advocate, and finds considerable difference in the signatures, particularly letters 'M' and 'd' when the attending circumstances are also taken into consideration, it comes out that it appears to be case of 'copy forgery' it is to be noted that the parties had lived together and had a daughter from the marriage. Therefore, the husband was aware of the signatures of the wife. So many signatures of the same period were produced on file in the from of signatures on the application for the job of the job of teacher (Ex.R30), application for leave (Ex.R32), leave application (Ex.R34), signatures on the cheque (Ex.R39), signatures on the bank withdrawal forms (Ex.R40 to EX.R43) and so on.

(13) I am of the view that the evidence of expert, namely Naresh Kataria, produced by the appellatant is more near to the factual position and his report (Ex.AW2/12) is to be accepted. I am of the view thet

infact it appears that the husband in his hurry to obtain the ex-parte decree appears to have committed fraud with the Court by furnishing wrong address of his wife in a clever manner where, in place of 'J-II', 'J-11' was written, which could appear similar. The possibility is also there that Shri O.K. Kaushik, Advocate, might have also been misled by some impostor, representing her to be Madhu'. Therefore, it was necessary that Madhu should have been got identified by Shri O.K. Kaushik, Advocate, as the same lady who had engaged him. This was not done. The background of litigation between the parties also shows that the present application was filed within four months of the passing of the divorce decree.

(14) Faced with this situation, the learned counsel for respondent has argued that the husband had contracted second marriage on 1.12.2002 and he has two children from the second marriage.

(15) If it is so, there is no ground to show any leniency to a person, who had defrauded the Court to obtain ex-parte divorce decree. It being so, the findings of the learned Additional District judge, Jhajjar, on all the issues are reversed and these issues are decided in favour of the present appellant (wife). Consequently, the impugned ex-parte judgment and divorce decree dated 13.8.2002 is set aside. Both the parties are directed to put in appearance before the successor Court of shr. D.R. Chalia, the learned Additional District Judge, Jhajjar, within two months of the passing of this order. The learned Additional District Judge, Jhajjar, shall proceed with the case in accordance with law and also take into consideration the discrepancies in the petition recorded above. Thereafter, both the parties shall be given opportunity to lead evidence and the matter will be decided afresh on merits.

(16) The present appeal is accordingly allowed.

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*A. Aggarwal*