

(1950) 12 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : Matrimonial Ref. No. 5 of 1950

Mrs. Phyllis Diana Hearne

APPELLANT

Vs

Sgt. Denzil Donald Patrick Hearne

RESPONDENT

Date of Decision : 18-12-1950

Acts Referred:

Divorce Act, 1869 — Section 10, 18, 50

Citation : AIR 1951 P&H 429

Hon'ble Judges : Savinder Singh Sodhi, J;Harnam Singh, J;Bhandari, J

Bench : Full Bench

Advocate : K.L. Kapur, for M.L. Saxena, for the Appellant;

Judgement

Harnam Singh, J.—Mr. Phyllis Diana Hearne was married to Sgt. Denzil Donald Patrick Hearne on 5-4-1948.

2. On 18-10-1949, Mrs. Phyllis Diana Hearne appealed u/s 18, Divorce Act, that her marriage with the Respondent may be declared to be null and void on the ground that on 5-4-1948, Sgt. Denzil Donald Patrick Hearne was married to Mrs. Freda James Hearne and that marriage had not been dissolved.

3. Respondent was served but he did not contest the proceedings in the trial Court.

4. On evidence examined at the trial the learned District Judge has allowed the Petitioner and granted the Petitioner an ex parte decree nisi with costs declaring null and void her marriage with the Respondent. The trial Court has then ordered that the Petitioner will have the custody of the minor child pending confirmation of the decree.

5. In proceedings in this Court notice which was sent to the Respondent has not been received back after service on the Respondent.

6. The learned Counsel appearing for Mrs. Phyllis Diana Hearne argues that under the Divorce Act, it is not necessary that the Respondent should be served.

In this connection he relies on Section 50, Divorce A Court From the record of the case it appears that the Respondent at no stage intended to resist the Appellant made by Phyllis Diana Hearne u/s 18 of the A Court That being so, I think that in these proceedings it is not necessary to serve the Respondent with notice.

7. The sole question for decision was whether Sgt. Denzil Donald Patrick Hearne was married on the day he took Mrs. Phyllis Diana Hearne to be his wife. On this point a certified copy of the judgment of the Lahore H.C. has been placed on the record. From that copy it appears that Sgt. Denzil Donald Patrick Hearne Appealed u/s 10, Divorce Act, that his marriage with Mrs. Freda James Hearne may be dissolved as Mrs. Freda James Hearne was living in adultery with Mr. R. Norton, Sergeant. A decree-nisi was passed in that case on 16-10-1943. When the case came up for hearing before the H.C. Mr. P.M. Lal Counsel for the Petitioner informed the Court that he had instructions from his client to withdraw the proceedings as parties wished to start afresh. On that statement the Court permitted the withdrawal of the proceedings and dismissed the Petitioner.

8. From documents on the record it appears that the marriage between Sgt. Denzil Donald Patrick Hearne and Mrs. Freda Constance Hearne was not dissolved at any time subsequently and that he was married to Mrs. Freda Constance Hearne on 5-4-1948, when he married Mrs. Phyllis Diana Hearne.

9. For the foregoing reasons I would confirm the decree nisi passed by the District J., Delhi, on 25-4-1950, declaring the marriage of Mrs. Phyllis Diana Hearne with Sgt. Denzil Donald Patrick Hearne to be null and void.

10. Mrs. Phyllis Diana Hearne has the custody of has minor child who will remain in her custody.

10a. No order as to costs in these proceedings.

Soni, J.

11. A point has been raised in this case by an oral Appellant that service on the Respondent should be dispensed with. The petnr's Counsel urges that a notice was sent to the Respondent by the District J. when the proceedings were going on before him regarding the Appellant for dissolution of marriage. The Respondent did not appear there nor took any steps to contest the proceedings. As a matter of fact he sent a letter to the District J. acknowledging the notice sent to him. A notice was again sent when the proceedings were pending in this Court to the Respondent. The notice has not been received back. The petnr's Counsel says that service of the notice should be dispensed with under the provisions of Section 50, Divorce Act. The object to serve a notice is to tell a person what is going on against him. The District J. informed the Respondent of the proceedings. A natural consequence of the District J.'s proceedings is the confirmation of the proceedings which are sent by him to this Court. The Respondent in due course should be aware that the proceedings for the

confirmation were to take place and in the circumstances of this case and in view of the fact that he acknowledged the notice of the District J., I think it would not be necessary to send any further notice to him. In these circumstances I would grant the oral Appellant of the petitioner's Counsel to dispense with the service of the notice. The Counsel for the Petitioner cited *Harris v. Harris* AIR 1921 Lah. 310 : 59 I.C. 89, in which the learned Judges relied upon *Hicks v. Hicks* 8 Cal. 756: for the proposition that the notice may be dispensed with. The latest authorities in England on this subject are *Weighman v. Weighman* (1947) 2 ALL E.R. 852 and *Paolantonio v. Paolantonio* (1950) 2 ALL. E.R. 404, in which the Judges have held that the circumstances of a particular case may make it desirable that the notices need not be sent if the Respondent had reason to believe that proceedings under the Divorce Act would be taken against him and has either provided the Petitioner with no address or otherwise the circumstances make it desirable that it is not necessary that notice be sent.

12. I agree that decree nisi be confirmed.

Bhandari, J.

13. I agree that the decree-nisi be confirmed.