
(2003) 04 P&H CK 0023
In the Punjab And Haryana At Chandigarh
Case No : First Appeal Order No. 46M of 1998

Rajinder Kaur

APPELLANT

Vs

Smt. Mukand Kaur L.R. of Bakhshish Singh

RESPONDENT

Date of Decision : 30-04-2003

Acts Referred:

Hindu Marriage Act, 1955 — Section 13

Citation : (2004) 136 PLR 47 : (2003) 4 RCR(Civil) 393

Hon'ble Judges : Kiran Anand Lall, J

Bench : Single Bench

Advocate : U.D. Gaur, for the Appellant; Arihant Jain, for the Respondent

Final Decision : Allowed

Judgement

Kiran Anand Lall, J.—The appellant has preferred this appeal against order dated 17.2.1998 vide which her application for setting aside exparte decree dated 13.8.1994 was dismissed by the learned Additional District Judge, Patiala. It was a decree of divorce, passed on 18.8.1994, in a petition u/s 13 of the Hindu Marriage Act, filed against her by her husband, Bakhshish Singh. The later expired on 15.9.1994.

2. Case of the appellant before the trial court was that she acquired knowledge of the (ex parte), decree for the first time, on 24.10.1994, from the officials in the office of Chief Engineer, Thermal Punjab State Electricity Board, Patiala, when she went there for the release of her husband's (ex-employee of PSEB) gratuity/general provident fund and pension etc. And, on coming to know of it, she filed an application for the setting aside thereof, on 27.10.1994. Her further case was that on getting information about her husband's death from her father's friend, she accompanied by her father, had attended her husband's cremation on 16.9.1994 and Bhog ceremony on 25.9.1994. But, at that time also, none told them about the decree of divorce.

3. The sole respondent impleaded in the application for setting aside ex parte

decree was Smt. Mukand Kaur (mother), the only legal representative of the deceased husband, and the decree was sought to be set aside on the ground that the appellant was never served in the divorce petition, either through ordinary process, by post, or by any other means.

4. The stand of Mukand Kaur respondent before the trial court was that after the death of Bakhshish Singh, application for setting aside of decree was not maintainable, no relief could be granted against him. Bar of limitation was also pleaded. It was further pleaded that the appellant very much had the knowledge of filing of divorce petition and also of the passing of decree of divorce. But, she intentionally did not contest the petition as she herself was interested in getting divorce, in fact, she and Bakhshish Singh had, earlier filed a joint divorce petition also, u/s 13-B of the Hindu Marriage Act, but the same was, later on, withdrawn as the Court where it was filed, lacked territorial jurisdiction. It was denied that the petitioner or her father had attended the cremation or the Bhog ceremony of deceased Bakhshish Singh.

5. The application for setting aside for exparte decree having been dismissed, the appellant has come up in appeal to this Court.

6. In this appeal, it is only the finding on issue No. 2 which has been challenged by the appellant. The issue reads as follows:-

"Whether there are sufficient grounds for setting aside the exparte decree?"

7. The decree (exparte) under reference was passed on 18.8.1994. The appellant later on, filed application for its setting aside on the ground that decree had been passed without effecting service of notice on her. According to her, she was neither served through ordinary process nor through registered post or any other means. The trial court, on the basis of evidence led by the parties, gave verdict against her and held that she had been duly served.

8. After having heard Shri D.Gaur, learned counsel for the appellant, Shri Arihant Jain, learned counsel for the respondent and having gone through the records, I find that the appellant had been duly served in the divorce petition but she did not contest the same, by putting in appearance in Court. Learned counsel representing her contended that substituted service of notice which was got published in the newspaper "Daily Ranjit" was not sufficient and it could not be said on the basis of such type of service that the appellant had been duly served. According to him, no efforts had been made to effect personal service of notice on the appellant through ordinary process or by post. But his contention in this regard, in my view, does not appear to be correct on facts. A perusal of the impugned order dated 18.8.1994 shows that summons were initially sent to the appellant through ordinary process. But, as service could not be effected through ordinary process, summons were thereafter, sent twice, through registered post. And, it was only when summons sent through registered post were also not received back, that the court got substituted service of the appellant effected by getting notice of the petition published in the local newspaper "Daily Ranjit". In

this connection, it Would be material to re-produce para.14 of the order under appeal, which reads as under:-

"14. The postal receipt on the record shows that the summons were sent for the service of the respondent by way of registered post. The record shows that the registered cover was never received back. The summons were sent at Jogi Nagar, Bathinda and the same address has been given in the petition filed u/s 13 of the Hindu Marriage Act. Thereafter, the publication was made in the "Daily Ranjit" and the notice was duly published in the "Daily Ranjit" for 18.7.94. When such are the circumstances, the presumption of service as raised by my learned predecessor cannot be said to be erroneous under any circumstance. I do not agree with the plea of learned counsel for the applicant that Ranjit newspaper has no circulation at Bathinda. Rather the learned counsel for the respondent Mukand Kaur has satisfied this court by placing on record copy of Ranjit Newspaper which shows that it has simultaneous publication from Patiala and Bathinda. Accordingly, the authority Sant Kaur Vs. Khazan Singh and Others, relied upon by the learned counsel for the applicant cannot help her because the publication was made in the local newspaper which was published from Bathinda. Thus no fault can be found with the presumption of service raised by my learned predecessor while passing the order dated 18.7.1994."

9. The contents of para 14 of the impugned order are self-contained and do not call for any further elucidation.

10. It may also be mentioned that none of the three judgments relied upon on behalf of the appellants viz. Sukhdev Singh v. Santosh Singh 1987 P.L.J. 475, Gram Panchayat of Village Kale Ke Uttar v. Surat Singh and Anr. 1994 P.L.J. 606, and Sushil Kumar Sabhanval v. Gurpreet Singh (2002)131 P.L.R. 382, is applicable to the facts of the present case. In Sukhdev Singh's case summons had not been sent to the respondent through registered post, whereas in the case of Gram Panchayat of village Kae Ke Uttar, substituted service was ordered on the first date itself, and in Sushil Kumar's case, substituted service was never got effected.

11. Besides, Ex.RI is the copy of order, dated 27.9.1993 passed by the Court in a joint petition for divorce passed by the Court in a joint petition for divorce filed u/s 13-B of the Hindu Marriage Act by the appellant and her husband. Vide this order the petition was dismissed for want of prosecution, but, this order and the copies of affidavits of parties (including appellant) attached thereof, do atleast show that the appellant and her husband had, earlier, filed a joint petition for divorce.

12. Falsity of the case of the appellant is also clear from the fact that according to her deposition as AW1, she had come to know of the death of her husband when her father came to her school to inform her about her husband's death, whereas her case in the application for setting aside of decree was that it was her father's friend who had informed "them" about her husband's death. There

are, thus, two different versions about the manner in which the appellant received information about the death of her husband. In my view, this fact is also indicative of the falsity of her case. She, it appears did not attend the cremation of her deceased husband and the reason, probably for not doing so, was that she felt was aware that the marriage stood dissolved through a decree of divorce.

For the reasons stated above, I do not find any infirmity in the impugned order, and as such, the appeal is dismissed being devoid of any merit. Parties shall, however, bear their own costs.