

FAO-7744-2017 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**FAO-7744-2017 (O&M).
Decided on: August 31, 2018.**

Ritu

.. Appellant

VERSUS

Ishwar Singh and another

.. Respondents

*** * ***

**CORAM: HON'BLE MR.JUSTICE M.M.S.BEDI
HON'BLE MR.JUSTICE ANUPINDER SINGH GREWAL**

*** * ***

**PRESENT Mr.Ram Kumar Saini, Advocate,
for the appellant.**

**Mr.R.N.Lohan, Advocate,
Mr.Rishab Lohan, Advocate,
for respondent No.1.**

M.M.S. BEDI, J. (ORAL)

The wife has preferred this appeal against the ex parte judgment and decree dated 13.11.2017, in favour of the respondent-husband, passed by the District Judge, Additional Family Court, Hisar.

Counsel for the appellant has submitted that the appellant had been wrongly proceeded against ex parte on 23.10.2017, and the ex parte proceedings ultimately culminated into an ex parte decree of divorce on 13.11.2017 i.e. within a period of 20 days.

We have considered the facts and circumstances of the case and gone through the record.

A perusal of the record indicates that the divorce petition filed by the respondent-husband had been transferred from the Court of Ms.Alka Malik, Principal District Judge, Family Court, Hisar, to the Court of Sh.Jaibir Singh, District Judge, Additional Family Court, Hisar, for 23.10.2017, without there being any notice to the appellant regarding the transfer of the case. On said date, the application filed by the appellant under Section 24 of the Hindu Marriage Act, was to be replied and considered but since none appeared on her behalf in the transferee Court on 23.10.2017, the transferee Court proceeded ex parte against the appellant in hurry. Though it is mentioned in the order dated 23.10.2017, that the case was fixed for consideration on application under Section 24 of the Hindu Marriage Act, yet the learned District Judge, Additional Family Court, Hisar, proceeded to pass ex parte order in the main case against the appellant.

The order dated 23.10.2017, reads as under: -

*“Present Petitioner with Sh.M.S.Poonia, Advocate
(Vakalatnama filed today).*

None for respondent.

Case received by way of transfer. It be checked and registered. Today, the case was fixed for arguments on application under Section 24 of the Hindu Marriage Act. However, the petitioner has filed application seeking permission to engage a counsel to contest the petition. Heard. In the interest of justice, the petitioner is permitted to engage counsel to contest the case. However, it is directed that the counsel shall act

as mediator/counsellor during the entire proceedings so as to help this Court as well as parties to arrive at amicable settlement at any stage.

Case called several times since morning outside this Court as well as court of Ms.Alka Malik, learned Principal District Judge, Family Court, Hisar, where this case was previously pending, but nobody has turned up on behalf of the respondent. It is already 3:10 P.M. Further wait is not justified. Hence, after giving last call at 3:10 P.M., the respondent is proceeded against ex parte. Let, matter to come up on 1.11.2017, for ex parte arguments.

*Date of order 23.10.2017 (Jaibir Singh)
District Judge (Addl. F.C.)
UID No.HR0137.”*

A perusal of order dated 1.11.2017, indicates that the Court had taken up the case for ex parte arguments but on perusal of the file, the Court realised that the respondent had not led any evidence ex parte. The District Judge, instead of giving sufficient time to the appellant, adjourned the case to 13.11.2017 to produce the ex parte evidence. The ex parte evidence was recorded on 13.11.2017. The affidavit of respondent and one Yogesh were taken on record and the divorce was granted to the respondent ex parte. The ex parte decree, on the face of it, appears to be unreasonable as transferee Court had received the file by transfer on 23.10.2017 and without realising that the parties had not been issued notice regarding the transfer of the case decided to proceed ex parte against the appellant.

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The divorce decree has got far reaching consequences as the matrimonial rights of the parties, which affect their entire life, are determined by the decision. The rules of natural justice should generally be followed. In the present case, rules of natural justice seems to have been violated. The appellant did not even get the period provided under the Limitation Act, to seek setting aside of ex parte proceedings dated 23.10.2017 which had been passed by the transferee Court in hurry.

The ex parte judgment having been passed against the appellant without giving her a fair opportunity deserves to be set aside. The order dated 23.10.2017, proceeding ex parte against the appellant is patently illegal.

The appeal is allowed. The order dated 23.10.2017 which is apparently illegal and unwarranted as per the circumstances existing on said date, is hereby set aside. The ex parte decree of divorce dated 15.11.2017, is also hereby set aside.

The parties are directed to appear before the Family Court, Hisar, on 6.10.2018, on which date, the file will be taken up for adjudication of the application under Section 24 of the Hindu Marriage Act and further proceedings will be taken up in accordance with law.

(M.M.S. BEDI)
JUDGE

August 31, 2018.
raj arora

(ANUPINDER SINGH GREWAL)
JUDGE

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No