Shakti Tripathi Vs Surpreeti Tripathi

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 30, 2012

Citation: (2013) 170 PLR 104

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Vijay Lath, for the Appellant; A.S. Kaler, for the Respondent

Final Decision: Dismissed

Judgement

K. Kannan, J.
Counsel for the petitioner states that costs of Rs. 25,000/- were directed to be paid. A draft of Rs. 25,000/- is being

tendered and the same is received by the respondent. The petition is filed by the husband challenging the order passed by the trial Court allowing

the petition filed by wife to set aside the ex parte decree of divorce. The facts of the case bore out that the petition for divorce was filed on,

2.3.2007 but on summons being issued by the trial Court, the wife was had purported to have refused the service. The Court had ordered fresh

notice to be issued through Court and by registered post but it appears that the Registry had issued a fresh notice for personal service and when

the notice could not be served on account of the alleged closure of the wife"s residence affixure had been made on 24.07.2007. A proclamation

said to have been issued by beat of drum was also said to have been effected. When the defendant did not appear she was set ex parte on

15.6.2007 and decree was passed against her. A petition to set aside the decree was filed by the wife claiming that she has not been served with

summons at all and she had not known of the proceedings till recently when the husband had purported to have contracted another marriage. The

petition was contested by the husband contending that after the period of appeal from the date of decree passed on 15.06.2007, he had

contracted a second marriage on 29.3.2008 and he has also through the marriage a daughter born on 19.12.2008. The contention of the

respondent further was that the wife had actually contacted the husband after knowing that he had married yet another woman in February, 2008

and sought for some compensation money. The amount could not be settled and now the petition had been filed falsely contending as that she was

not served with notice and that she came to know about the decree only within a month prior to the date of her petition on 21.07.2008.

2. Before the trial Court evidence was lead and the husband sought to give evidence that the wife actually refused to receive the summons by

examination on the bailiff The bailiff was put to searching cross-examination where he admitted that he had not himself known her previously and in

the endorsement of refusal there had been no attestation from any third party about the identity of the party. He has also questioned about the

location of the house and direction it faced, the name plate which hung outside the house, the breadth of the road where the house is situated etc.

On each one of these aspects the bailiff was contradicted by the factual issues that he did not know the direction which the house faced correctly,

the name plate outside the house was not in the manner that he gave evidence about. Even, on the issue of whether the Munadi had been effected

there was a dispute and it was contended that it was not effected. Even the door No. of the house had not been specifically given in the Court

summons or in the Munadi.

3. The Court had taken note of the fact that even the order passed by the Court when the summons were not issued on the wife had not been

property complied with. The trial Court has extracted the order which it passed on 2.3.2007 that it had directed the notice to be issued after

deposit of process fee and registered cover with acknowledgement to be sent within two days for 28.3.2007. The Court observed that neither the

summons were sent through registered cover nor was even a registered cover with acknowledgement due furnished. On the other hand, the Court

found fault with its own Registry that the Superintendent of the Office of District Judge had issued a personal service without reference to the order

passed by the Court on 2.3.2007. The Court also made an issue of the fact that Door number for the house was spelt out even in the wedding

card but in the summons the house number had not been specified. While the Court had adverted to the evidence of RW-6 Gurpreet Singh where

he had admitted that no person had attested the summons for Munadi and while considering the evidence RW-5 Bharat Bhushan, father of

husband, the Court even doubted whether his evidence could be correct since he had stated that Munadi had been effected in his presence. The

doubt was on account of the fact that independent evidence ought to have been available at that time but no such person had attested the Munadi.

Under such circumstances the Court observed that the correct address of the wife had not been deliberately given and it was intentionally

concealed and the registered cover had not been issued in violation of the Court orders.

4. The learned counsel appearing on behalf of the petitioner strenuously contends that the finding regarding non-service by inadequate address

could not be true since when on the very same address the wife had been served summons from the High Court. I find this argument to be

fallacious. If the High Court had issued summons and it had been served, the same could not be presumed for lower court service even with

inadequate address. That the address was inadequate with reference to non-supply of information about the Door Number itself is not denied. The

contention however, is that with such insufficient address the High Court was able to serve summons and therefore the District Court must have

also effectively caused the service of summons. I cannot make such a presumption in the manner argued by the learned counsel for the petitioner.

Under the circumstances a factual rendering of a finding of non-service on the wife by the trial Court cannot be said to be erroneous that is

susceptible for a challenge in revision. In the petition before the Court in revision a party cannot urge findings of facts rendered as erroneous unless

shown to be perverse or without reference to the relevant materials. On the other hand, I find the trial Court has correctly considered the factual

details and it has shifted the evidence of witnesses appropriately to come to the proper conclusion.

5. The counsel appearing for the petitioner has a second string to bow, as it were, that the husband has taken a second wife and when the third

party interest intervened the petition for setting aside the ex-parte decree could not have been allowed. This argument is in my view, wrongly

projected to make it appear as though that even if there is ""sufficient cause"" made by a party for setting aside the ex-parte decree, the Court would

fetter its discretion by the only fact that yet another woman had come in the life of the husband and therefore the wife who was lawfully married to

the husband should be defeated in her right to seek for an adjudication on merits. Such a contention is untenable and I would reject it. Learned

counsel for the petitioner refers me to the decision of this Court in Babita Laul Vs. Vijay Laul, that held that where a husband contracted a second

marriage after the expiry of limitation period for the remarriage of the husband, an application to set aside the decree by the former wife after the

period of limitation for setting aside the ex-parte decree on the ground that she had no knowledge about the suit, ought to be rejected. The court

was so holding in a case where the wife failed to prove that she had no knowledge about the suit or proceedings. In this case, on a factual

consideration the trial Court has observed which I have affirmed and she had no knowledge and no knowledge could be attributed to her. I cannot

take from the judgment cited that a second marriage itself will be a ground to urge for a husband to defeat the wife''s right to have the ex-parte

decree set aside. It is invariably a matter which the Court will take into note for exercise of discretion if the other grounds are also available to the

husband. It is a general practice in Courts that rights of parties are never allowed to be defeated only on technicalities. Courts are liberal to set

aside the ex-parte decree even when sufficient cause is not shown and visit the defaulting party with costs as panacea for the inconvenience and the

difficulty caused to a decree holder. The dilution of strictness of the consideration is essential to secure that an adjudication is made always on

merits. The Court will also consider whether the discretion should be not exercised in a situation where the third party interest has come about.

This shall always be an additional safeguard; it cannot be a principal argument to advanced by a husband. If I have held that the wife had made a

case of sufficient cause for non-appearance any other aspect that the husband might have, would be set naught and ought to be treated as

irrelevant and liable for rejection. Learned counsel also refers me to a decision of Parimal Vs. Veena @ Bharti, It is also a case where the wife''s

application for setting aside ex-parte decree had been made four years later and the court found that there was no ground to set aside the exports

decree. The Court also had on a factual consideration found that the wife had not put in appearance, despite service of summons by process

server. A service which is effected on a wife that comes unresponded will secure a different dispensation from a situation where the wife has not

served at all. Learned counsel also refers to subsequent event that was dealt with by the Supreme Court in Pasupuleti Venkateswarlu Vs. The

Motor and General Traders, . This decision is not applicable, for, the relevance of subsequent events have been matters which came for the first

time in rent control jurisdictions while examining the necessity of the landlords to secure eviction. This doctrine need not at all times be applied in a

matrimonial proceeding. The counsel also refers me to a decision in Surendra Kumar Vs. Kiran Devi, 3 where the Rajasthan High Court held that

application by the wife for setting aside an ex-parte decree, when the husband contracted a second marriage after four months was found to be not

maintainable. With due respect I find myself unable to subscribe to such a view. Yet another judgment in S.P. Srivastava Vs. Smt. Prem Lata

Srivastava, where the application had been filed by the wife after 34 months after the decree after the husband had been remarried. I find the Court

was not setting as a matter of course that where ever husband took a second wife the application for setting aside ex-parte decree could not be

allowed.

6. In all situations where the petition is filed by the wife to set aside the ex-parte decree with sufficient grounds shown, the courts themselves

approach the issue with certain sensitivity, for, with another woman coming in the way, there could be serious difficulty for harmonious living. In this

case, I find an attempt has been made by my brother Judge to conciliate and to secure some financial compensation. I put it across to the wife''s

counsel an offer of certain sum sought to be made by the husband to be considered. Learned counsel appearing on behalf of the respondent would

have none of it acting on the instructions of the wife, who is present in Court. I would insulate myself from the circumstances when an offer of

settlement that is rejected and will not take it as a cause for holding any view against the wife. If the wife would press for an adjudication on merits,

it is left to the party to adopt such a course. The order passed by the trial Court is confirmed and the revision is dismissed.