

Saroj Vs. Ajit Singh

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Court : Punjab and Haryana

Decided On : Mar-16-1993

Reported in : II(1993)DMC228

Judge : Amarjeet Chaudhary, J.

Appeal No. : F.A. No. 483 of 1991

Appellant : Saroj

Respondent : Ajit Singh

Advocate for Def. : Harsh Aggarwal, Adv.

Advocate for Pet/Ap. : U.K. Jain, Sr. Adv. and; Ajay Aggarwal, Adv.

Judgement :

Amarjeet Chaudhary, J.

1. This appeal is directed against the order dated 3.4.1991 passed by the learned Additional District Judge, Gurgaon, whereby application of the appellant for setting aside ex parte Decree of divorce dated 2.4.1990, has been dismissed. The case put forward by the appellant is that she was living with the Respondent-husband under the same roof. The respondent filed a divorce petition and took the appellant to Court after tutoring her on the pretext that some land was to be transferred in her name and thereafter he obtained ex-parte divorce on the ground of adultery by

playing a fraud upon the appellant. The appellant came to know about ex parte decree of divorce against her on 24-6-1990 and after re-opening of the Court, she came to know the contents of the divorce petition and then moved an application for setting aside ex parte decree.

2. The stand of the respondent-husband is that the appellant was duly served through registered A.D. post as well as in person who appeared in the Court on the first date of hearing and reconciliation proceedings were held wherein she confessed the acts of adultery and the entire proceedings were within her knowledge and she intentionally did not contest the petition knowing that she was a defaulting party and other averments of the appellants were also controverted. The learned Additional District Judge, Gurgaon after recording the evidence of the parties dismissed the application of the appellant-wife vide order dated 3.4.1991 which has been challenged in the instant appeal.

3. I have heard the learned Counsel for the parties and perused the record of Trial Court.

4. This is a peculiar type of case where the wife-appellant and the husband-respondent at the relevant time i.e., at the time of filing of divorce petition and at the time of recording of evidence, were living in the same house under the same roof and other relations of respondent-husband were also living at the same premises, i.e., House No. B-3J, D.L.F. Colony, Gurgaon. The wife-appellant appeared in the Court without any Counsel initially and she also appeared in the Court during the evidence for establishing her identity, as observed by the Trial Court. The allegation upon which divorce was sought pertains to adultery without particulars of the alleged adulterer. Even the respondent-husband lived with the wife-appellant as her husband upto November, 1989 whereas the alleged acts of adultery are stated to have been committed in August and September, 1989.

5. The Trial Court has dealt with the application for setting aside ex parte decree as if it was trying the divorce petition, rather the Presiding Officer of the Trial Court has become a witness to the allegation of adultery stated to have been admitted in his presence during the reconciliation proceedings. Not only this, the Trial Court even went to the extent of establishing identity of the appellant by calling her with

photographs which was done at instance of the husband during the trial after proceedings ex parte against the wife on 16.3.1990.

6. The sequence of the events i.e., living of the parties under the same roof in the company of relations of husband-respondent, non-representation of the appellant before the Trial Court in the divorce proceedings and her appearance in the Court as per wishes of the respondent husband creates suspicion and her actual knowledge of divorce petition and her proper service besides possibility of her being misled as the respondent is Ayurvedic Medical Officer serving under the Haryana Government belonging to Educated family whereas the appellant has studied upto 10th/11th Class only, having rural back-ground Moreso, the allegations in the main petition are as such which will mar the entire life of the appellant, besides the fact that the present respondent is getting divorce and under these circumstances establishing of the allegation of adultery ex parte should not stand and if the husband-respondent is having genuine grounds he can prove the same even in the presence of the appellant-wife.

7. Above, all, law on setting aside ex-parte proceedings is very liberal and it becomes very necessary in cases like the present one where the allegations are of serious nature which can stand throughout. Life of the wife is go un-rebutted. Therefore, I am of the considered view that the present appeal must succeed and consequently the impugned order dated 3-4-1991 whereby application of the appellant for setting aside ex parte decree of divorce dated 3.4.1990 was dismissed is set aside and resultantly the ex parte decree of divorce dated 3.4.1990 is also set aside subject to payment of Rs. 1000/- as cost by the appellant-wife to the respondent-husband.

8. The role of the Trial Court also requires to be commented upon inasmuch as the learned Additiunal District Judge has become a witness to the ground of divorce by introducing the facts which are not present on the record. It has been stated by the learned Additional District Judge that appellant-wife admitted in his presence during the reconciliation proceedings that she committed the acts of adultery, as pleaded by the husband-respondent whereas there is no such mention on the judicial file nor there could be any such mention. Similarly the Trial Court had held

that the wife appeared in the Court along with Album on 16.3.1990 and that wife had appeared on the oral asking of the Presiding Officer to secure her presence to satisfy himself about her identity whereas there is no such order on the judicial file nor the Court was supposed to act in such a fashion when the wife had already been proceeded against ex parte and it appears that the learned Additional Distt. Judge instead of deciding the matter on merit has become witness in favour of the husband which is not the correct approach. It would have been better if the learned Additional District Judge had refrained from expressing any opinion on the matter which is not on the record. These observations may be communicated to the learned Additional District Judge for his guidance in future.

9. Since the conduct of the learned Additional District Judge showed his undue inclination towards the husband and he has already expressed his opinion even on the merit of the case beyond the evidence on the record, so it would be desirable if the divorce petition is tried either by the learned District Judge himself or is entrusted to any other Additional District Judge to avoid prejudice to either parties' case.

10. With these observations, the case is remanded to District Judge, Gurgaon, for disposal in terms of aforementioned directions and the petition will be disposed of expeditiously preferably within six months.

Parties are directed to appear before the learned District Judge, Gurgaon, on 30.4.1993 to receive further direction in the matter.

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