

**Surendra Kumar Vs. Kiran Devi**

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**Court :** Rajasthan

**Decided On :** Jan-10-1997

**Reported in :** AIR1997Raj63

**Judge :** P.C. Jain, J.

**Acts :** [Hindu Marriage Act, 1955](#) - Sections 13; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 9, Rule 13

**Appeal No. :** Civil Revn. Petn. No. 56 of 1996

**Appellant :** Surendra Kumar

**Respondent :** Kiran Devi

**Advocate for Def. :** R.S. Gehlot, Adv.

**Advocate for Pet/Ap. :** R.K. Singhal, Adv.

**Disposition :** Revision allowed

**Judgement :**

ORDER

**P.C. Jain, J.**

1. The petitioner-husband has filed this revision petition Under Section 115, C.P.C. against the order dated 8-12-1995 passed by Shri Badrilal Meena, Addl. Dist.

Judge, Raisingh Nagar in Civil Misc. Case No. 44 / 93 by which the application of the respondent under Order 9, Rule 13, C.P.C. was allowed and the ex parte decree of divorce in favour of the petitioner was set aside.

2. The petitioner-husband filed a petition for annulment of marriage Under Section 13 of the Hindu Marriage Act (for short 'the Act') against the respondent on 5-9-1992 on the ground of cruelty etc. According to the petitioner, at the time of filing the petition, the wife was mentally ill and was admitted in Govt. Mental Hospital, Jaipur and undergoing treatment for schizophrenia. The service of the notice of the non-petitioner was effected on her mother and since she did not put in appearance on behalf of the non-petitioner, an ex parte decree of divorce was passed by the court in favour of the petitioner on 11-8-1992. The non-petitioner then filed an application under Order 9, Rule 13, C.P.C. before the learned Distt. Judge who by the impugned order set aside the decree.

3. I have heard learned Counsel for the petitioner and the non-petitioner.

4. Learned Counsel for the petitioner has argued that while resisting the application filed by the non-petitioner under Order 9, Rule 13, C.P.C., the petitioner categorically stated that he contracted a second marriage four months after passing of the decree by complying Section 15 of the Act. On the happening of this development, the learned Distt. Judge was not legally competent to set aside the above decree. The learned Distt. Judge has, therefore, committed illegality or irregularity in the exercise of jurisdiction. Learned Counsel has placed reliance on *Harjeet Singh v. Smt. Guddi*, (1987) 1 Rajasthan LR 520 and *Smt. Shimla Devi v. V. Kiran Kumar*, (1994) 3 WLC 519 (Raj).

5. Learned Counsel for the non-petitioner has supported the order of the learned Distt. Judge.

6. It has not been disputed before me that after passing of the ex parte decree in favour of the petitioner by the Distt. Judge on 11-8-1992, the petitioner contracted a second marriage after four months. In such a situation, the important question that arises for determination is whether the ex parte decree can be set aside?

7. This question arose in Harjeet Singh v. Guddi's case, (1987) 1 Rajasthan LR 520, and it was held by this Court that when second valid marriage is contracted, it is in the interest of justice to dismiss the application for setting aside the ex parte decree for divorce. Again the same question was considered in Smt. Shimla Devi v. V. Kiran Kumar's case, (1994) 3 WLC 519, and it was held that by contracting a second marriage, the interest of second wife intervenes. Reference was also made to P. Venkateswarlu v. Motor & General Traders, AIR 1975 SC 1409 for the proposition that all the proceedings of the courts can and must take conscious cognizance of events and developments subsequent to the institution of the proceedings provided the rules of fairness to both the sides are scrupulously obeyed. For the above reasons, it was held that the application moved by the first wife under Order 9, Rule 13 for setting aside the ex pane decree passed against her and in favour of her husband was not maintainable.

8. In view of the above position of law, the application by the non-petitioner was not maintainable and the learned Distt. Judge, therefore, committed a patent jurisdictional mistake in allowing the above application.

9. I may state that it is really unfortunate that the non-petitioner had no opportunity to contest the petition filed by her husband Under Section 13 of the Act. It is made clear that she can move an application Under Section 25 of the Act for alimony and maintenance. If such an application is filed, it is directed that concerned court shall decide the same expeditiously looking to the circumstances of the case.

10. For the above reasons, I allow the revision petition and set aside the order of the learned Distt. Judge. Parties are left to bear their own costs.