

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 3554 of 2015 (O&M)
Date of decision: 25.5.2015

Gobind Rai

.. Petitioner

v.

Prem Lata

.. Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. A. S. Manaise, Advocate for the petitioner.

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Rajesh Bindal J.

The petitioner has filed the present petition impugning the order dated 13.1.2015, passed by the learned court below, whereby the application filed by the petitioner for setting aside the order dated 4.5.2012, proceeding the petitioner ex-parte and dismissing his objections in default, was dismissed.

In the case in hand, the respondent filed a petition for seeking custody of two minor sons born out of the wedlock, who are living with the petitioner-husband. The marriage of the parties was solemnised on 19.1.2001. Out of the wedlock, two sons and one daughter were born. Two sons are residing with the petitioner, whereas daughter is residing with the respondent. As the parties could not pull on together, they are living separately. The respondent filed petition on 15.9.2009 seeking custody of the minor sons living with the petitioner, in which the petitioner appeared and filed written statement, but on account of his non-appearance on 15.3.2010, he was proceeded against ex-parte. The learned Guardian Judge passed ex-parte order on 6.1.2012, in favour of the respondent directing the petitioner to hand over custody of the two minor sons to the respondent

within two months. As the order was not complied with, the respondent filed execution in February, 2012. After receipt of notice in the execution petition, the petitioner filed objections, besides filing of application for setting aside of ex-parte order passed by the Guardian Judge directing handing over custody of the minor sons to the respondent. Even in the objections filed by the petitioner on account of his non-appearance on 4.5.2012, he was proceeded against ex-parte and his objections were dismissed in default. On 19.7.2012, application was filed by the petitioner for setting aside ex-parte proceedings. As the averments made in the application filed for setting aside ex-parte proceedings were quite vague, the petitioner even amended the same. The aforesaid application was dismissed by the learned court below vide order dated 13.1.2015, which has been impugned in the present petition.

Learned counsel for the petitioner submitted that non-appearance of the petitioner on 4.5.2012 was neither intentional nor wilful, rather, it was for the reason that a wrong date was noted by the counsel and the mistake was bonafide. The application was not belated. The same deserves to be allowed and the objections filed by the petitioner be heard on merits.

After hearing learned counsel for the petitioner, I do not find any reason to interfere with the impugned order. It is unfortunate that a petition seeking custody of the minor children filed by the wife in the year 2009 and disposed of on 6.1.2012 is still pending for execution. The conduct of the petitioner shows that effort was to delay the proceedings. Earlier he appeared in the petition filed by the wife seeking custody of the minor sons but was proceeded against ex-parte on 15.3.2010. Thereafter, for a period of about two years, he never thought of taking care of those proceedings and finally the court passed ex-parte order on 6.1.2012 directing the petitioner to hand over custody of the two minor sons to the respondent-wife within two months from the date of order. The respondent filed execution dated 9.2.2012, in which notice was issued to the petitioner. It is pleaded that after receipt of notice, the petitioner filed objections in the execution on 25.4.2012. As is stated in the petition, application for setting

aside of the ex-parte order directing handing over custody of the children to the respondent-wife was not filed on the same day, rather, it was filed on 3.5.2012. Even in the execution petition filed by the respondent-wife, the petitioner was proceeded against ex-parte on 4.5.2012 and on the same day, his objections were also dismissed in default. The case was fixed for 22.5.2012, on which date the court passed the following order:

“Application for enforcement of order dated 6.1.2012 has been moved on behalf of applicant Prem Lata. As per order dated 6.1.2012, application of applicant Prem Lata under Section 25 of Guardian and Wards Act was allowed and respondent was directed to hand over the custody of two minor children namely Mohit and Dharamvir in favour of applicant Prem Lata within the period of two months. However, respondent failed to hand over the custody of such minor children during such period and only thereafter, applicant moved the present application for getting the custody of minor children Mohit and Dharamvir. Respondent Gobind Rai appeared and filed objection but he again absented and such objection petition was dismissed in default. In the given set of circumstances, there is no other remedy but to issue the custody warrants for handing over the custody of minor children from respondent in favour of the applicant. Accordingly, such custody warrants are issued with the directions to the concerned SHO to depute some lady constable in a civil dress (sic dress) accompanied by applicant and such police official shall visit on the next date of hearing at the given address of respondent for the compliance of custody warrants and both the children be produced in this court on the same day without any inconvenience to the minor children namely Mohit and Dharamvir. In case, respondent would like to accompany such children, at the time of compliance of such warrants, his request be not declined. Adjourned to 8.6.2012 for such purposes.”

As the aforesaid order was not complied with, on the next date, fresh warrants were directed to be issued for 19.7.2012. On that date, both the children were produced in court. The petitioner filed application for setting aside the ex-parte order dated 22.5.2012. In the application, it was stated that on 4.5.2012, the petitioner filed objections in court and the case was adjourned to 3.8.2012 for filing reply. The fact was incorrect, as the petitioner had already filed objections on 25.4.2012 and in fact, the respondent-wife had filed reply in court on 4.5.2012 to the objections filed by the petitioner. On this date, none appeared for the petitioner. Even in other paragraphs of the application, the pleadings suggested that the petitioner did not appear in court on 25.4.2012 and the next date of hearing noted was 3.8.2012. Prayer was made only for setting aside of the order dated 22.5.2012 directing ex-parte proceedings against the petitioner. No prayer was made for restoration of the objections dismissed in default. Application dated 28.7.2012 seeking to amend the application dated 19.7.2012 was filed by the petitioner for setting aside the ex-parte proceedings against him. The only change sought in the pleadings was that the petitioner had filed objections on 4.5.2012 and the case was fixed for reply on 3.8.2012. Amended application dated 28.7.2012 for setting aside ex-parte proceedings was filed. In this application, the prayer made was for setting aside the ex-parte proceedings directed against the petitioner on 25.4.2012, the date on which the petitioner had appeared in court and filed objections also.

From a perusal of the un-amended or amended applications filed by the petitioner, it is evident that prayer is not for setting aside ex-parte proceedings against the petitioner on 4.5.2012. Besides this fact, what can be gathered from the manner in which the case is being conducted is that the petitioner is making all out efforts to delay the proceedings. Firstly, he appeared in the petition filed by the wife seeking custody of the children, filed reply and thereafter was proceeded against ex-parte. Secondly, during execution petition, he initially appeared, filed objections and then absented. In this process, he was able to delay even the execution proceedings for more than two years. The conduct of the petitioner is further evident from

the fact that the order passed by the court below dismissing his application for setting aside ex-parte proceedings passed on 13.1.2015 was challenged before this court by filing the present petition on 20.5.2015. The courts should have been sensitive enough to deal with the cases of custody and should ensure that the same are disposed of expeditiously.

For the reasons mentioned above, I do not find any merit in the present petition. The same is, accordingly, dismissed. The court below is directed to finally dispose of the execution petition pending before it on the next date of hearing.

(Rajesh Bindal)
Judge

25.5.2015
mk

(Refer to Reporter)