

IN THE HIGH COURT OF PUNJAB AND HARYANA, AT
CHANDIGARH

CR No. 6736 of 2013

Date of Decision: 02.07.2015

Seema

.....Petitioner

Vs.

Sunil Pawan @ Sonu

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Achin Gupta, Advocate,
for the petitioner.

None for the respondent.

SABINA, J.

Petitioner has filed this petition challenging the order dated 15.10.2013, whereby application moved by the petitioner for directing the respondent to clear the arrears of maintenance *pendente lite* and litigation expenses, was dismissed.

Learned counsel for the petitioner has submitted that vide order dated 02.03.2012, application moved by the petitioner for maintenance *pendente lite* was allowed by the trial Court. However, respondent had failed to pay the arrears of maintenance *pendente lite*. Petitioner moved an application before the trial Court directing the respondent to clear the arrears of maintenance *pendente lite* and litigation expenses and it was further prayed that in case respondent failed to do so then his defence be struck off. The trial Court erred in dismissing the application as having been rendered infructuous.

In support of his arguments, learned counsel has placed reliance on a decision of this Court in **Smt. Suman vs. Ajit Singh** 2011 (6) R.C.R. (Civil) 49, wherein it was held as under:-

“Admittedly, the respondent has not paid the maintenance pendente lite as ordered by this Court on 04.12.2007. A period of more than three years has elapsed but till date he has not paid even a single penny to the wife. He has not even filed any appeal against the aforesaid order fixing maintenance. The person who is disobeying the order of the Court, cannot be allowed to be heard on merits. Since, the respondent has not complied with the order passed by this Court on 04.12.2007, his defence is struck off. The guidance as to how to proceed further in such circumstances opined that after the striking off defence of the husband on account of non-payment of maintenance, the wife's allegations in the petition are to be taken as correct or the husband cannot be permitted to be heard on merits.”

Learned counsel has next placed reliance on a decision of this Court in **Paramjit Kaur vs. Kashmir Singh** 1993 (2) R.R.R.538, wherein it was held that if the respondent had failed to pay the arrears of maintenance *pendente lite* despite opportunities then his defence was liable to be struck off.

In the present case, petitioner has filed petition under Section 13 of the Hindu Marriage Act, 1955, (for short 'the Act') seeking a decree of divorce. During the pendency of the petition, petitioner moved an application under Section 24 of the Act. The said application was allowed by the trial Court, vide order dated

02.03.2012. Since the respondent had failed to clear the arrears of maintenance *pendente lite* and litigation expenses, petitioner moved an application dated 18.02.2013 (Annexure P-1) before the trial Court for a direction to the respondent to clear arrears of maintenance *pendente lite* and further prayed that in case respondent failed to do so then his defence be struck off. In reply to the said application, respondent prayed that he may be allowed to make the payment of arrears of maintenance in easy installments. A perusal of the reply dated 19.03.2013 (Annexure P-2), filed by the respondent reveals that he had paid some amount towards maintenance *pendente lite* to the petitioner but had failed to clear the arrears.

It has been stated by the counsel for the petitioner during the course of arguments that after having thirteen opportunities, respondent had not paid even a single penny to the petitioner towards arrears of maintenance *pendente lite*. Since the respondent had failed to pay the arrears of maintenance *pendente lite* to the petitioner, the trial Court should have struck off the defence of the respondent. Merely because the respondent had led his evidence did not mean that the application moved by the petitioner for striking off the defence of the respondent had been rendered infructuous. Thus, the trial Court fell in error in dismissing the application (Annexure P-1), moved by the petitioner as having been rendered infructuous. Since the respondent had failed to make the payment of arrears of maintenance *pendente lite*, the defence of the respondent was liable to be struck off as the object and purpose of Section 24 of the Act could not be defeated.

Accordingly, this petition is allowed. Impugned order dated 15.10.2013 is set aside. Consequently, it is ordered that the defence of the respondent is struck off.

**(SABINA)
JUDGE**

July 02, 2015
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