

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Revision No. 2481 of 2013

Date of decision : July 16, 2015

Manohar Lal

... Petitioner

vs.

Usha Rani and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Namit Sharma, Advocate
for the petitioner.

Surinder Gupta, J

Heard.

The petitioner filed petition under Section 125 Cr.P.C. claiming maintenance, in which, the trial court vide order dated 24.7.2008 allowed interim maintenance of ₹1,000/- per month from all the respondents, who are wife and daughters of the petitioner. The order was passed ex-parte as on the date fixed none had appeared for the respondents and reply to the application filed by the petitioner seeking interim maintenance had also not been filed. The respondents moved application seeking permission to file its reply and for setting aside the ex-parte order. The application was dismissed with the observations that the trial court is not competent to review its own order.

The respondents then filed appeal before the Additional District Judge, Panipat, wherein he set aside the impugned order and the ex-parte proceedings against the respondents with the observations in para no.11 and 12 as follows :-

“11. On the other hand, respondent Manohar Lal has taken a plea that his daughter are getting salaries of Rs.5,000/- each from their jobs. However, he has not placed on record any document showing the said income of his daughters. Further, it is an admitted fact that respondent Manohar Lal is living separately with his brother. It means that he is the person having sufficient means neglects his wife and daughters to maintain them. Further, there is nothing on record that

appellant no.1 is earning anything. Learned trial Court has passed by order dated 24.07.2008 and impugned order dated 02.03.2013 without taking into consideration the materials on record. Therefore, keeping in view all such facts and circumstances, it would not be reasonable to keep the maintenance allowance to the respondent as such. Thus, the order dated 24.07.2008 passed by learned trial Court awarding an amount of Rs.1,000/- to the respondent as interim maintenance is hereby set aside.

12. *In view of the foregoing circumstances, the appeal is allowed and the application filed by appellants before the trial Court for setting aside the order dated 24.07.2008 is allowed and consequently, order dated 24.07.2008 is hereby set aside. Trial Court record be sent back alongwith a copy of this judgment. Record of the appeal be consigned to record room.”*

Learned counsel for petitioner submits that respondents despite grant of opportunity have failed to file reply and on 24.7.2008 none had appeared on their behalf and the trial court had committed no error of law or fact while allowing interim maintenance of ₹1,000/- per month. The petitioner who is the husband of respondent No.1 and father of respondents No. 2 to 5 has no source of income and is unable to maintain himself. The setting aside of the order granting interim maintenance has caused great prejudice to him. The appellate court while deciding the petition has referred to the evidence led during the course of evidence and the admissions made by the petitioner regarding his business, income etc.

In the absence of any plea of respondents it was inappropriate to rely on any evidence on record supporting plea of respondents. He has placed reliance on the judgment in the case of **Anathula Sudhakar s. P. Buchi Reddy (Dead) by L.Rs & Ors.** 2008 (2) RCR (Civil) 879 and **Darshan Kaur vs. The Amritsar Primary Cooperative Agricultural Development Bank Limited Amritsar and Another**, 2010 (1) RCR (Civil) 747 to press upon the argument that in the absence of plea no evidence is admissible.

The above proposition of law is not disputed one. The appellate court has allowed the respondents to file reply. It is at subsequent stage that opportunity to lead evidence is to be allowed to the respondents. On perusal of the judgment of the appellate court I find no legal or factual infirmity of law and fact calling for interference by this court. The petitioner is claiming maintenance from his wife and daughters and it will be appropriate and in the interest of justice to decide the matter on merit after providing opportunity to both the parties to put forth their plea and lead evidence.

This petition has no merits and is dismissed.

(Surinder Gupta)
Judge

July 16, 2015
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