

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(215)

CRR (F)-151-2014

Decided on: November 27, 2015.

Hemlata and another

.... Petitioners

Versus

Satender

..... Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Gopal Sharma, Advocate, for the petitioners.

Mr. Pulkit Dagar, Advocate, for
Mr. Rajesh Lamba, Advocate, for the respondent.

M.M.S. BEDI, J (ORAL)

This is a petition filed by wife and her minor son aggrieved by the order dated 18.04.2014 by virtue of which petitioner No.1 has been denied any maintenance on the ground that respondent-husband has obtained an ex parte divorce on the basis of matrimonial misconduct (cruelty) of petitioner No.1.

It has been observed by the Family Court in para 8 of the order that the decree of divorce has not been set aside as such the findings given by the Matrimonial Court could not be ignored.

Learned counsel for the petitioners has submitted that the appeal is pending. An application for setting aside the ex parte divorce has also been filed.

I have considered the facts and circumstances of the case and I am of the opinion that in view of the decree of divorce having not been

finalized, the Family Court is duty bound to determine the right of the petitioner No.1 to seek maintenance under Section 125 Cr.P.C. Even it is presumed that petitioner No.1 is a divorced wife, still her right to seek maintenance is not barred under law.

The petition is allowed. The order dated 18.04.2014 is set aside to the extent of refusing any maintenance to petitioner No.1. The Family Court, Gurgaon is directed to reconsider the claim of petitioner No.1 in view of the circumstance that the decree of divorce has not attained finality and that petitioner No.1 is legally entitled for maintenance. Quantum of maintenance be determined on the basis of the evidence already available on the record.

Parties are directed to appear before the trial Court on 16.01.2016. The Family Court shall take up the matter on said date by re-summoning the file.

It is further directed that the rights of petitioner No.1 will be re-determined within a period of 3 months from 16.01.2016.

I do not find any ground to interfere in the order passed qua petitioner No.2.

The liability of petitioner No.1 to contribute for the maintenance of petitioner No.2 would also be re-considered while determining the maintenance payable to petitioner No.1.

(M.M.S. BEDI)
JUDGE

November 27, 2015
harsha