

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

CR No.166 of 2016

Date of Order: 12.01.2016

Chand Kumar Saini

....Petitioner

Versus

Anubha

....Respondent

CORAM : HON'BLE MR.JUSTICE DARSHAN SINGH

Present : Mr. Anil Kumar Sharma, Advocate
for the petitioner.

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Darshan Singh, J

Present revision petition has been preferred against the order dated 02.5.2015 passed by the learned District Judge, Yamuna Nagar at Jagadhari vide which the application filed by the petitioner for setting aside the ex parte judgment and decree dated 05.3.2014 has been dismissed.

As per the averments in the application, respondent-Anubha had lodged case FIR No.283 dated 25.7.2012 under Sections 498-A/406 and 506 IPC against the petitioner, which was pending in the court of learned Chief Judicial Magistrate, Yamuna Nagar at Jagadhari. Petitioner could not appear in the

said case on 18.11.2013 as his counsel had informed a wrong date to him. Resultantly, his non-bailable warrants were ordered to be issued. Sardara Singh, the maternal uncle of the respondent had also threatened the petitioner with dire consequences if he would have appeared before the court. So he could not appear in the court on 26.11.2013 and was proceeded against ex parte. Ultimately, the ex parte judgment and decree was passed on 05.3.2014. His absence was not intentional rather it was bonafide due to the facts narrated above and if the judgment dated 05.3.2014 is not set aside, the petitioner will suffer an irreparable loss.

Said application was contested by the respondent on the ground inter alia that he had not appeared in the court intentionally and deliberately. Even his counsel did not appear. The ex-parte judgment and decree has been rightly passed against the petitioner and he is not going to suffer any irreparable loss rather the respondent will suffer irreparable loss if ex parte judgment and decree is set aside.

I have heard learned counsel for the petitioner and carefully perused the paper book.

Learned counsel for the petitioner contended that the petitioner could not appear in the proceedings of the case as the respondent has got registered a criminal case under Sections 406/498-A/506 IPC against him. He could not appear in that case on 18.11.2013 as a result of which, non-bailable warrants of arrest were issued against him. He, thus, contended that the

absence of the petitioner was not intentional rather the same was due to aforesaid compelling circumstances. He further contended that the learned trial Court has not framed the issues while disposing of the application.

I have duly considered the aforesaid contentions. The framing of the issues is not necessary for the disposal of the miscellaneous applications like the present one, so the plea raised by learned counsel for the petitioner that the learned District Judge has disposed of the application without framing the issues carries no substance.

A perusal of the impugned order shows that after receiving the notice in divorce petition, the petitioner had appeared in the court through his counsel Sh. S.K. Saini, Advocate on 16.4.2013. It mean the petitioner was represented by a counsel in the main case, so the plea raised by the petitioner that he could not appear in the court as his warrants of arrest were issued in the criminal case carries no substance as he could have well appeared in the divorce petition before the learned District Judge through his counsel. It is further evident from the impugned order that the respondent had filed an application under Section 24 of the Hindu Marriage Act during the pendency of the petition. No reply to that application was filed by the petitioner and the last opportunity was granted to him to file the reply on 26.11.2013. On that day, the petitioner absented from the proceedings and was proceeded against ex parte. Thus the absence of the petitioner cannot be stated to be

unintentional or bonafide rather it appears that he absented from the proceedings of the case in order to evade the filing of reply to the application under Section 24 of the Hindu Marriage Act. Even thereafter, the case remained pending till it was finally decided on 05.3.2014 so he was having sufficient time to move the application for setting aside ex parte proceedings during the pendency of the petition.

As the petitioner was duly served and had attended the proceedings of the case so he was required to file the application for setting aside the ex parte decree within 30 days from the date of the decree but he has filed the application on 26.5.2014 i.e after two months and 21 days, which is barred by limitation. The explanation rendered by the petitioner for his non-appearance also does not seem to be bonafide.

Consequently, I do not find any illegality in the impugned order passed by the learned District Judge. Resultantly, the present petition has no merit and the same is hereby dismissed.

January 12, 2016
manoj

(Darshan Singh)
Judge