

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

C.R. No.7430 of 2016 (O&M)

Date of Decision.17.11.2016

Chetna Mahajan

.....Petitioner

Vs

Gulshan Mahajan

.....Respondent

Present: Mr. Ajay Mahajan, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

C.M. No.23123-CII of 2016

The application is allowed subject to all just exceptions.

Exemption from filing certified copies of Annexures P-12 to P-14 is granted and the same are taken on record.

C.R. No.7430 of 2016 (O&M)

The counsel for the petitioner contends that in view of the compromise effected between the parties, the petitioner-wife had withdrawn the proceedings under the Domestic Violence Act but the respondent-husband did not withdraw the divorce petition, Though it was dismissed in default but despite the compromise, the restoration application moved and the same has erroneously been allowed.

Notice of motion.

Ms. Himani Kapila, Advocate accepts notice for the respondent.

She submits that the impugned order suffers from no illegality and perversity. All these pleas can always be taken when the petitioner-wife has already filed the written statement in divorce petition. The divorce

petition was listed for payment of maintenance pendente lite when it was dismissed in default.

I have heard learned counsel for the parties and appraised the paper book. No doubt in pursuance of the compromise dated 06.07.2015 (Annexure P-2), the petitioner wife had withdrawn the petition filed under the Domestic Violence Act vide order dated 29.02.2016 (Annexure P-12) as well as the Appellate Court order dated 15.02.2016 (Annexure P-13) but the husband has not adhered to the compromise and moved the application for restoration. It is the said order which has been assailed in the revision petition.

I am of the view that instead of contesting the application for restoration, the petitioner-respondent, in the divorce petition, shall be at liberty to take all possible objections qua the maintainability of the divorce petition in view of the subsequent events by moving an application. In case such an application is moved, the trial Court shall frame the issue qua the maintainability of the divorce petition and treat it as preliminary issue by affording three-three effective opportunities to the parties to the lis and thereafter, shall decide the matter in accordance with law.

The order impugned is upheld and the revision petition stands disposed of with the above observations.

(AMIT RAWAL)
JUDGE

November 17, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No