

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

CRM-M-10076-2016

Decided on:-23.05.2016.

Dr. Amit JainPetitioner(s)

Versus

Komal Jain and anotherRespondent(s)

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

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?

Present:- Mr. Rajeev Sharma, Advocate for the petitioner.

Mr. Navdeep Kalair, Advocate for respondent No.1.

Mr.P.S. Madahar, AAG, Punjab.

HARI PAL VERMA, J. (ORAL)

Prayer in this petition is for quashing of order dated 11.3.2016 passed by learned Judicial Magistrate 1st Class, Ludhiana (Annexure P-1) whereby on account of non-appearance of the petitioner, he has been proceeded against ex-parte and his conditional warrant of arrest for recovery of decretal amount has been issued for 22.04.2016.

Order dated 11.03.2016 (Annexure P-1) passed by learned Judicial Magistrate 1st Class, Ludhiana (Annexure P-1), reads as under:-

“Today the case was fixed for argument on application as well as for payment of decretal amount by JD, the same has not been paid by the JD/respondent. Case called

several times but no one has come present on behalf of the JD/respondent nor respondent/JD has appeared in person. In these circumstances, let file be taken up after lunch break for awaiting appearance of JD/respondent.

xxxx xxxx xxxx xxxx xxxx

“File again taken up after lunch break. Case called several times since morning but no one has come present on behalf of the JD/respondent nor respondent/JD has appeared in person, it appears that the JD/respondent is not interested in contesting the case. It is already 2.30 p.m. No further wait is justified as the undersigned has been assigned the duty of conducting interviews from 2.30 p.m., onwards for the posts of peon. Even on the previous date of hearing the JD had failed to appear and to make payment of decretal amount and one adjournment was granted on request of ld. counsel for the JD/respondent. Today, no one has appeared on behalf of JD nor JD has appeared in person. As such, JD/respondent is hereby proceeded against exparte.”

Now, conditional warrants of arrest of JD for the recovery of decretal amount be issued for 22.04.2016.”

On 22.03.2016, while accepting the plea as raised by counsel for the petitioner, this Court has passed the following order:-

xxxx xxxx xxxx xxxx xxxx
xxxx xxxx xxxx xxxx xxxx
xxxx xxxx xxxx xxxx xxxx

“Learned counsel for the petitioner contends that on 11.3.2016, the petitioner had to come from Jaipur, but as his train was late, he could not reach the Court well in time. Learned Magistrate did not hold the Court after 2.30 p.m. as he was busy in conducting interviews. Thus, nonappearance of the petitioner before pre-lunch session was beyond his control, but petitioner had appeared after post-lunch session.”

Learned counsel for the petitioner, while referring to the aforesaid orders, contends that on that day, the petitioner reached

the Court at 3.00 p.m. whereas the case was called at 2.30 p.m., but the learned Magistrate did not hold the Court after 2.30 p.m., as he was busy in conducting interviews. Therefore, non-appearance of the petitioner before pre-lunch session was beyond his control, but petitioner had appeared after post-lunch session. He further contends that the petitioner is ready to join the proceedings.

Mr.Navdeep Kalair, Advocate has put in appearance on behalf of respondent No.1 and filed his Power of Attorney, which is taken on record. He fairly submits that in case, the petitioner appears before the learned Executing Court, he has no objection in case the order dated 11.3.2016 passed by learned Judicial Magistrate 1st Class, Ludhiana, is set aside.

Taking into consideration the sufficient cause, as shown by counsel for the petitioner, the order dated 11.3.2016 passed by learned Judicial Magistrate 1st Class, Ludhiana, is set aside and the petitioner is directed to join the proceedings and the Executing Court shall proceed further in accordance with law.

As regards; the prayer of the petitioner that the Executing Court be directed to expedite the disposal of the case, the Executing Court is directed to take note of this aspect as well.

May 23, 2016
Anjal

(HARI PAL VERMA)
JUDGE