

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.M-102 of 2010
Date of Order: 13.01.2016

Bhag Singh

..Appellant

Versus

Mohinder Kaur

..Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MS. JUSTICE LISA GILL**

**Present: Mr. Rai Singh Chauhan, Advocate,
for the appellant.**

**Mr. Jasbir Singh, Advocate,
for the respondent.**

RAJIVE BHALLA, J (Oral)

The appellant, challenges judgment and decree dated 03.06.2009, passed by the Additional District Judge (FTC), Ropar, dismissing his petition for grant of a decree of divorce.

Counsel for the appellant submits that the petition was dismissed as the appellant could not adduce evidence for three consecutive dates and did not clear arrears of maintenance. The appellant is now ready to pay arrears of maintenance, and even pay enhanced maintenance and costs, provided he is granted an adequate opportunity to lead evidence, in support of his pleading that the respondent has re-married and is now living with one Mohinder Singh, etc.

Counsel for the respondent submits that the arrears of maintenance as well as enhanced maintenance, should be made a pre-condition to the re-opening of the case or to the grant of an opportunity to the appellant to lead evidence.

We have heard counsel for the parties and perused the impugned judgment.

The appellant, filed a petition for grant of a decree of divorce. The respondent controverted allegations in the petition, particularly the allegation regarding a separation pursuant to an agreement and her second marriage. The onus to prove these allegations lay upon the appellant, but the appellant did not lead any evidence on three consecutive dates nor did he step into the witness box. This apart, the appellant did not pay maintenance @ Rs.2000/- per month. The petition was, therefore, dismissed.

However, as counsel for the parties agree that the matter may be remitted, by granting an opportunity to the appellant to lead evidence, the appeal is allowed, judgment and decree, dated 03.06.2009, passed by the Additional District Judge (FTC), Ropar, is set aside and the matter is restored to the Additional District Judge (FTC), Ropar, for adjudication afresh and in accordance with law, subject however to the following agreed terms and conditions:-

- a) The appellant shall pay Rs.50,000/- as costs, to the respondent on the date of his appearance before the trial court;
- b) The appellant shall pay maintenance as assessed, by the Additional District Judge (FTC), Ropar, vide order dated 28.03.2009, i.e., from 23.05.2007 (the date of filing of the application), upto the date of appearance of the parties before the trial court.
- c) Counsel for the parties also agree that maintenance pendente lite from the date of appearance till the disposal of the petition shall be paid to the respondent

@ Rs.5000/-, with Rs.20,000/- as litigation expenses,
the latter to be paid on the date of appearance.

- d) In case, the appellant defaults in complying with any of the agreed directions, his evidence shall be deemed to have been closed by order;
- e) The appellant shall be granted three opportunities to conclude his evidence;
- f) The proceedings shall conclude within six months of parties putting in appearance, on 24.02.2016

Parties are directed to appear before the Additional District Judge (FTC), Ropar, on 24.02.2016.

(RAJIVE BHALLA)
JUDGE

January 13, 2016
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(LISA GILL)
JUDGE