

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 10331 of 2014

DATE OF DECISION :- March 16, 2016

Rohit Sikand

...Appellant

Versus

Sapna Sikand

...Respondent

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:- Mr. Vikas Mohan Gupta, Advocate for the appellant.

Mr. Harsh Aggarwal, Advocate for the respondent.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

M.JEYAPPAUL, J.

1. The Trial Court dismissed the petition filed by the appellant-husband seeking divorce on the ground of cruelty for the simple reason that the petitioner failed to subject himself for cross examination in spite of several opportunities afforded to him. The trial Court has made an observation that nine effective opportunities had been given to the petitioner to lead evidence but he did not appear to subject himself for cross examination by the respondent. Ultimately, the petition praying for divorce was dismissed by the trial Court.

2. We heard the submissions made on either side.

3. On a perusal of the minutes of proceedings recorded by the trial Court which culminated in the impugned order, we find that the trial Court has counted even the opportunity afforded to the parties for compromising the dispute between them as an effective opportunity given to the petitioner.

4. On 29.10.2014, it appears that the petitioner was present before the Court to subject himself for cross examination by the respondent, but unfortunately the respondent requested an adjournment and such a plea of the respondent was acceded to by the trial Court on fastening a costs of ₹2000/- upon her. Thereafter, the matter was taken up by the trial Court on 5.11.2014. On the said date, having made an observation that nine effective opportunities to lead evidence given to the petitioner were not properly availed of by the petitioner, the petition for divorce filed by the petitioner was dismissed.

5. Learned counsel appearing for the appellant submits that the trial Court has made a wrong observation that nine effective opportunities were given to the petitioner to lead evidence.

6. Per contra, learned counsel appearing for the respondent while referring to the decision of the Hon'ble Supreme Court in ***M/s. Shiv Cotex versus Tirgun Auto Plast P. Ltd. and others 2011(4) RCR (Civil) 803*** submitted that the Hon'ble Supreme Court has made an observation that there was no justification for the High Court to give yet another opportunity to produce evidence on the side of the plaintiff in spite of the fact that the plaintiff wantonly failed to produce evidence during three effective opportunities given to the plaintiff.

7. As rightly pointed out by the learned counsel appearing for the appellant, the trial Court had not given nine effective opportunities which

were not utilized by the appellant. In fact, the appellant subjected himself for examination and thereafter for cross examination. But the respondent who sought a time to cross examine the appellant was also fastened with costs. On the day when the impugned order was passed by the trial Court, it appears that the appellant sought for some more time but the trial Court making the above observation chose to dismiss the petition.

8. Coming to the decision referred to by the learned counsel appearing for the respondent, we find that it was a case where three consecutive opportunities were given by the Court to the plaintiff to adduce evidence. All three effective opportunities given to the plaintiff were not utilized by the plaintiff and, therefore, such an observation was made by the apex Court. Therefore, the above decision will not apply to the facts and circumstances of this case.

9. In our considered view, the trial Court should have afforded one more opportunity for the appellant to lead evidence.

10. In view of the above, setting aside the impugned order passed by the trial Court, the trial Court is directed to give three more effective opportunities to the appellant to conclude his evidence.

11. The appeal is accordingly allowed. Both the parties shall appear before the trial Court on 11.4.2016.

(M. JEYAPPAUL)
JUDGE

(RAJ MOHAN SINGH)
JUDGE

March 16, 2016

p.singh