

C.R. No. 3266 of 2017

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 3266 of 2017

DATE OF DECISION:08.05.2017

Ekta

.....Petitioner

Versus

Bejinder Kumar

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. JS Dadwal, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 17.3.2017 (Annexure P-2) passed by Additional District Judge, Chandigarh, whereby, the judgment of trial Court has been set aside on the ground of non-payment of arrears of maintenance and appeal filed by respondent-husband has been allowed by remanding the case to the trial Court to lead evidence.

Briefly, the facts of the case as made out in the present petition, are that the respondent-husband filed a petition under Section 13 (i) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') for grant of divorce on the ground of cruelty. During pendency of the divorce petition, an application under Section 24 of the Act for grant of maintenance was

filed by the petitioner-wife, which was allowed and amount of ₹5000/- was granted as maintenance. Respondent-husband failed to make payment of maintenance to the petitioner and as such the petition for grant of divorce was dismissed on the ground of non-payment of maintenance. Said order was challenged by way of filing FAO No. M-184 of 2015, wherein, the impugned order was set aside and the respondent-husband was directed to pay the arrears of maintenance as ordered by the trial Court and the matter was remanded to the trial Court to afford an opportunity to both the parties to plead and contest the case through their respective counsel and thereafter decide it on merits. Thereafter, inspite of availing various opportunities, the petitioner did not conclude her evidence and ultimately her evidence was closed by the order of the Court on 17.3.2017, which is subject matter of challenge in the present petition.

Learned counsel for the petitioner contends that the petitioner could not appear before the trial Court on 27.2.2017 and 3.3.2017 due to her ailment but on 17.3.2017 she was present and the evidence of two witnesses was also prepared after getting their affidavits attested, which was to be tendered before the Court. When the petitioner went to the Court to tender their affidavits by way of evidence at 2.00 pm, she came to know that the Presiding Officer was on half day leave and order has already been passed in the case. Learned counsel also submits that non-appearance of the petitioner was neither intentional nor wilful but due to the circumstances, which were beyond her reach. Learned counsel further submits that one effective opportunity be granted to her to conclude the entire evidence and the petitioner is ready to compensate the opposite party in monetary terms and no prejudice will be caused to the party opposite.

Heard the arguments advanced by learned counsel for the petitioner and have also perused the impugned order and other documents available on the file.

The facts relating to filing of the petition for grant of divorce, filing of an application for grant of maintenance under Section 24 of the Act and also filing of an appeal before this Court are not disputed.

The only grievance of the petitioner is that after remand of the case to the trial Court in FAO No. M-184 of 2015, she could not appear on two occasions but on 17.3.2017, she along with her two witnesses was present and their affidavits were also prepared. When the petitioner went to the Court for tendering those affidavits, she came to know that the Presiding Officer was on leave for second half and order was already passed.

No doubt the petitioner remained absent on two occasions because of her ailment but on the third occasion, she along with her two witnesses was present and evidence of the petitioner was closed as the case was already taken up by the trial Court.

It is a settled proposition of law that the scope of exercise of judicial discretion is to achieve the ends of justice, in furtherance to the provisions of Code of Civil Procedure. A limited prayer has been made by learned counsel for the petitioner, while challenging impugned order dated 17.3.2017, that the petitioner may be granted one effective opportunity to conclude her evidence so that she can produce all the witnesses on the same date. No doubt, the petitioner was granted sufficient opportunities but on the date when her evidence was closed affidavits of two witnesses were got prepared to tender the same in evidence but the Presiding Officer was on leave for second half. Undoubtedly, speedy trial is fundamental right of the litigants and no good ground is made out to linger on the case for evidence

of defendant and as such the evidence was closed by Court order. The learned trial Court ought to have granted one more opportunity to lead evidence and ought not to have passed the order closing the evidence of the petitioner-respondent.

In case **Joginder Singh and others vs. Smt. Manjit Kaur**, 2000 (2) RCR (Civil) 382, this Court has observed as under:-

“3. Should such discretion by the Court can ever be termed as "uncontrolled and un-guided exercise of judicial discretion by the Court? "I have no hesitation in answering the above question in the negative. Certainly, it is not possible for the Court to provide the panacea to all problems arising at different stages of the suit. The Code of Civil Procedure is a comprehensive code and the different stages of a suit are controlled and regulated by various checks and limitations provided in the Code. The pious wish of the legislation for expeditious disposal of the suit runs like a golden thread in the various provisions of the Code. The inherent powers vested in the Court under section 151 of the C.P.C. are of very wide magnitude, but are certainly controlled by self restraints and restrict exercise of such powers depending on merit of each case. The Court is under an implied obligation to balance the equities between the parties to a suit to achieve the ends of justice, which is the basic paramount object of the Code. The equities would demand that power under the provisions of the Code or the inherent powers should be exercised by the Court to correct imbalances or inequities resulting from unnecessary

adjournments, between the parties. As a result of fault of one party to the suit, the other is certainly put to inconvenience or unnecessary harassment. Delay in conclusion, of "proceedings again is a factor of vital importance, as such, uncontrolled opportunity to a party to conclude its evidence in any number of opportunities would certainly prejudice the interest of the other party to the suit, who is exposed to prolong litigation and expense. Thus, there has to be a stage when the Court must decline to grant further opportunity to the defaulting party to conclude its evidence."

Similar view has been taken by this Court in **Kaila Devi and others vs. State of Haryana** in **C.M. No. 2726-CI of 1993** in **RFA No. 459 of 1988**, decided on 17.12.1998, which is as under:-

"Inherent powers cannot be used as an instrument to intrude the powers of the Court in regard to a procedure or a remedy, if specifically provided in other provisions of the Code. No code or law could be codified so as to provide for each and every situation, at every stage of the proceedings arising from the vacuum left in the enactment. Such situations are to be supplied by the Court by recourse to inherent powers to create a bridge over such situation for meeting the ends of justice or prevent abuse of process of law. To do justice is the primary duty of the Court but duty imposed should be discharged in consonance with the provisions of the Code and within four corners of well enunciated principle, inherent powers being adjunct to the specifically provided powers of the Code as

codified in the code. Thus they could not be used for disturbing the procedure provided under the Code because its ramification could prove retrograde to the administration of justice by Civil Court. Entertainment of such application would have the effect of infringing the concept of finality non-doctrine of civil jurisprudence."

As per provisions of Orders 16 and 18 of CPC, the intention of Legislature is to fairly conclude the evidence of the parties without unreasonably compromising the expeditious disposal of the suit. The Court may grant further time to the party to commence the evidence. In case of default, the Legislature has given specific powers to the Court under Order 17 Rule 3 of the Code for disposal of the suit or to proceed with the suit as the Court may deem fit and proper. These powers vested in the Court cannot be rendered ineffective or meaningless by granting indefinite adjournments for leading evidence by a party. Such approach is bound to decimate the very purpose of the Code i.e. to achieve the ends of justice and deliver expeditious decision in the cases. Accordingly, such provisions can neither be rendered ineffective nor taken to nadir so as to render provisions of Code as trivial.

The procedural law is enacted with the object of doing substantial justice between the parties. Its purpose is to determine the dispute between the parties and provide finality to such determination. The intention is also to prevent multiplicity or frivolous litigation to achieve the object of the golden thread underlying the entire procedure prescribed under the Code. However, it is for the Court to determine, while exercising its discretion uniformly, by creating balance between the parties but such

discretion is to be controlled by settled preposition of law keeping in view the facts and circumstances of each case.

Similar observation has been made by Hon'ble the Apex Court in case **State of Punjab and another vs. Shamlal Murari and another, 1976 AIR (Supreme Court) 1177.**

No doubt, the petitioner was granted opportunities but he could not adduce his evidence. There is nothing on record to show as to whether any cost was imposed for not producing his evidence from time to time. Court would have cautioned the petitioner that in case the evidence was not produced, the same would be closed. The order closing the evidence of a party has got far reaching consequences. The main object of the Court is to do substantial justice. The procedural wrangles cannot be allowed to stay in the way of grant of substantial justice. In the present case, sufficient opportunity was granted but still petitioner could not adduce his evidence within those available opportunities. A procedural rule has to be liberally construed and care must be taken so that the technicality may not hamper in the administration of justice. To do justice, sometimes technicalities are to be ignored. If the breach can be corrected, without injury to a just disposal of the case, the Court should not enthrone a regulatory requirement into a dominant desideratum. Accordingly, in the larger interest of the justice, the reasonable opportunity is required to be granted to the party to lead his evidence and for that, opposite party can be compensated by way of costs.

In the present case, the petitioner was granted two opportunities to conclude her evidence but due to circumstances as mentioned above, she could not conclude her evidence and her evidence was closed by the order of Court.

By considering the submissions made by learned counsel for the petitioner, law position as explained above and also the fact that the petitioner will conclude her entire evidence on one effective opportunity after compensating the opposite party in monetary terms, the present petition is allowed. The impugned order dated 17.3.2017 is set aside subject to payment of cost of ₹10000/- to be paid to the respondent by way of draft. The trial Court is directed to grant one effective opportunity to the petitioner to conclude her evidence. It is also clarified that in case the petitioner fails to conclude her evidence on one date, no further opportunity will be granted to her.

May 08, 2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes