

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

CR No.3865 of 2017.

Date of Decision: 26.05.2017.

Jagjit Singh

....Petitioner.

VERSUS

Baljinder Kaur and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. P.K.S. Phoolka, Advocate for the petitioner.

SNEH PRASHAR, J.

Challenge in this petition is to the order dated 20.03.2017 passed by learned Civil Judge (Junior Division), Bathinda vide which the defence of petitioner-Jagjit Singh was struck off in a suit filed by respondents-plaintiffs Shubh Seerat Kaur and another under Order XXXIII Rule 1 of the Civil Procedure Code as an indigent person for grant of maintenance under Section 20 of the Hindu Adoptions & Maintenance Act, 1956.

The submissions made by Mr. P.K.S. Phoolka, learned counsel representing the petitioner have been considered.

Learned counsel for the petitioner submits that the petitioner and respondent No.1 Baljinder Kaur are husband and wife. The ongoing marital dispute between them has given rise to litigation between them. There were five cases pending between the parties in different Courts at Bathinda. For convenience of both the parties, the petitioner gave an

one Court. Respondent No.1 through her counsel gave no objection and vide order dated 07.04.2017 (Annexure-P3) all the cases pending between the parties were transferred to one Court. Since the petitioner had filed an application for clubbing of all the cases pending between the parties in one Court, he requested learned trial court to adjourn the matter and grant him opportunity to file reply after the cases were transferred to one Court, but learned trial court declined him the opportunity and struck off his defence. Learned counsel submits that in case the petitioner does not get an opportunity to put up his defence, he will suffer an irreparable loss. In absence of pleadings, he will also not be able to lead proper evidence. Therefore, only one opportunity be given to him to file his written statement.

The impugned order apparently is inconsistent in itself and cannot be left to sustain. The order is as under:-

*“Present: Sh. N.K. Jeet, counsel for applicant.
Sh. R.S. Brar, counsel for respondent.*

Today the case was fixed for filing reply by respondent. Perusal of file reveals that respondent has been appearing through Advocate Sh. R.S. Brar, Adv. Since then respondent has availed to effective opportunities to file reply. Today none has appeared on behalf of respondent. Case called several times. Now, it is already 3.55 pm. Therefore, I do not find any benefit for giving further adjournment for the same purpose. This court deems fit the defence to struck off. Let case be adjourned to 11.4.2017 for applicant evidence.

*(Harjinder Singh), CJJD
Bathinda/20.3.2017”*

While on one hand learned trial court had recorded the presence of counsel for the petitioner (respondent in the suit) in the order,

on the other hand it was mentioned in the order that though the file revealed

that the respondent was appearing through an Advocate Shri R.S. Brar but none had appeared on behalf of the respondent. The order appears to have been passed at 3:55 p.m. In absence of representation of the petitioner (respondent in the suit), instead of proceeding *ex parte* against him, learned trial court surprisingly recording the presence of the Advocate who was not present and proceeded to struck off the defence of the petitioner.

To avoid delay of proceedings in the suit, notice is not being issued to the respondents. The petitioner is contesting the suit for maintenance filed by his wife-respondents. In case he does not get a chance to file his written statement and set up his defence, he will also not be able to lead evidence to prove his version and that will result in serious prejudice to his case. Otherwise also, proper pleadings and evidence adduced by both the parties is always helpful to the Court in adjudicating the matter in dispute between the parties completely and effectively.

Thus, considering all aspects one opportunity is given to the petitioner to file his written statement. The date of hearing in the case before learned trial court is said to be 05.07.2017. The petitioner will file his written statement on the date fixed in the case i.e. 05.07.2017, subject to payment of Rs.10,000/- as costs which shall be paid by the petitioner to the respondent-wife. Accordingly, the instant revision petition is allowed. In case the written statement is not filed on the date fixed, no further opportunity shall be accorded.

(SNEH PRASHAR)
JUDGE

26.05.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**
Whether Reportable : **Yes/ No**