

In the High Court of Punjab and Haryana at Chandigarh

CRR(f)-228 of 2017

Date of Decision: 31.5.2017

Vishwadeep Bhardwaj

---Petitioner

versus

Shilpa Bhardwaj

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. J.S.Pannu, Advocate
for the petitioner**

Rekha Mittal, J.

The present petition directs challenge against order dated 1.3.2017 passed by the District Judge, Family Court, Gurugram whereby defence of the petitioner in proceedings under Section 125 of the Code of Criminal Procedure (in short "Cr.P.C.") has been struck off for want of payment of costs of Rs. 500/- in the Legal Aid Cell, Gurugram and filing the written statement.

Counsel for the petitioner has submitted that the petitioner is B.Tech (Mechanical) from the Birla Institute of Technology and Science (Bits)-Dubai Campus and thereafter from November 2010 till date he has been working in United Arab Emirates (UAE). At present, he is working as Mechanical Engineer in the Bin Dasmal Group in Abu Dhabi and is on probation till June 2017. It is further submitted that as the petitioner has been on probation at his current place of posting for almost one year, he was unable to visit India and give complete instructions to his Advocate for conducting proceedings on his behalf. It is further submitted that the

petitioner visited India for the last time in Summers 2016. Counsel would urge that a serious prejudice shall be caused to the petitioner in case he is not permitted to file the written statement and defend the proceedings. The petitioner is ready to compensate the respondent for delay, if any, attributable to him.

I have heard counsel for the petitioner, perused the paper book particularly various annexures appended with the petition.

Perusal of the zimni orders placed on record would make it evident that the petitioner availed a number of opportunities for filing the written statement and failed to file the written statement despite last opportunity granted for the purpose and even did not deposit costs of Rs. 500/- with the Legal Aid Cell, Gurugram.

On a query raised by the court, counsel for the petitioner has fairly informed that the proceedings for filing of written statement are pending since June 2016 and no order has been made for grant of interim maintenance to the respondent-wife. It has further been informed that the petitioner is ready to deposit a reasonable amount with the Court which may be appropriated towards interim maintenance, if any, assessed by the Court.

Be that as it may, in case the order impugned is allowed to sustain it would be of serious consequence for the petitioner who would be deprived to defend the proceedings initiated at the behest of his wife for grant of maintenance. The court may also be deprived of getting a clear picture with regard to income of the petitioner, necessary for assessing maintenance as the petitioner being the husband may be held liable to pay adequate maintenance to his wife. Taking into consideration the principle

of natural justice coupled with the discussion made hereinbefore, it is expedient that the petitioner is allowed one opportunity to file the written statement by setting aside the order striking of his defence.

For the foregoing reasons, the petition is allowed, the impugned order is set aside subject, however, to the following conditions:-

- (1)The petitioner shall be entitled to only one opportunity for filing of written statement on or before 15.7.2017.
- (2)He shall deposit costs awarded by the Court below before 15.7.2017.
- (3)He shall deposit an amount of Rs. 2 lakhs with the court below which shall be appropriated towards interim maintenance, if any, awarded in favour of the respondent.
- (4)The said amount shall be converted into a fixed deposit receipt so that the party who is held entitled to receive the money also gets interest.

Before parting with the order, it is clarified that the petition has been disposed of without notice to the respondent in order to avoid inconvenience and incurring expenditure by her. However, if the respondent has any grievance to express, she shall be at liberty to file an appropriate application before this Court.

Petition stands disposed of.

(Rekha Mittal)
Judge

31.5.2017

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No