

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

CRR(F) No. 230 of 2017(O&M)

Date of decision: 1.6.2017

Gurdayal Singh Arora

....Petitioner

VERSUS

Darshana Arora

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. K.S. Virk, Advocate for the petitioner.

REKHA MITTAL, J.(Oral)

The present petition directs challenge against order dated 26.04.2017 whereby defence of the petitioner has been struck off for want of filing of written statement.

Counsel for the petitioner has submitted that the respondent filed an application under Section 125 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') on 21.11.2016 in which notice was issued for 20.01.2017. On that date, summons issued for service of the petitioner were not received back and the case was adjourned to 26.04.2017. Later, on that day, the petitioner appeared in person, his presence was marked and the case was adjourned to 26.04.2017 for filing of Power of Attorney, written statement and reply to the application for interim maintenance. On 26.04.2017, Sh. Jaspal Singh Gandhi, Advocate, appeared on behalf of the petitioner, filed the Power of Attorney and requested for a date for filing of the written statement but the District Judge, Family Court, Karnal struck off defence of the respondent and the case is now fixed for 05.06.2017.

I have heard counsel for the petitioner, perused the paper-book particularly zimini orders dated 20.01.2017 and 26.04.2017.

Perusal of the averments made in the petition and so also the zimini orders recorded by the Court below would make it evident that the Court has proceeded with the case in a hurry without appreciating and realizing consequence of rendering the petitioner handicap in making his written submissions to contest claim of the respondent- wife. No doubt, provisions under Section 125 Cr.P.C. were enacted with an intent to provide immediate succor to destitute wife, neglected children and parents etc. Equally true is that the proceedings are summary in nature but at the same time, without finding any fault on the part of a litigant, his rights to submit his pleadings before the Court cannot be scuttled. A serious prejudice is likely to be caused to the petitioner in case he is not permitted to file his written statement and give his side of the story to contest claim of the respondent- wife. In view of the above, order passed by the Court below striking off defence of the petitioner cannot be allowed to sustain and liable to be set aside.

For the foregoing reasons, the petition is allowed. The petitioner is provided with one opportunity to file the written statement and reply to application for interim maintenance on or before 05.06.2017, the date fixed in the main case. In case the petitioner fails to avail of this opportunity, the petition shall be deemed to be dismissed. A copy of the written statement and reply to application for interim maintenance shall be supplied to counsel opposite in advance by 04.06.2017.

Before parting with this order, it is clarified that the petition has been disposed of without notice to the respondent in order to save her

from unnecessary expense and inconvenience. However, the respondent would be at liberty to file an appropriate application in case she has any grievance to express.

JUNE 1, 2017

‘D. Gulati’

Whether speaking/reasoned

Whether reportable

:

:

yes/no

yes/no

(REKHA MITTAL)

JUDGE