

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-M No.198 of 2017 (O&M)

Date of Decision: 06.09.2017

Chamkaur Singh

. . . Appellant

Versus

Narinder Kaur

. . . Respondent

**CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE AUGUSTINE GEORGE
MASIH**

Present: Mr. Kamal Narula, Advocate
for the appellant.

M.M.S. Bedi, J. (Oral)

This is husband's appeal, who had filed a petition under Section 13 of the Hindu Marriage Act, 1955, for dissolution of marriage between the parties by passing a decree of divorce. He has filed this appeal against order dated 01.08.2017, which reads as follows:-

*“Present: Sh. RS Khara, counsel for the petitioner.
Respondent with counsel Sh. GS Gill, Advocate.*

Payment has not been made. Neither the petitioner has come present nor he has sent any amount to be paid to the respondent. The learned counsel for the petitioner has requested for adjournment to make the payment but he has failed to furnish any plausible and reasonable explanation for

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not making the payment of maintenance allowance and litigation expenses. Therefore, the request for further adjournment is declined. The payment of litigation expenses and arrears of maintenance pendent lite is a condition precedent for further prosecution of the petition by the petitioner. Accordingly, the petition is dismissed for the default on the part of the petitioner. File be consigned to the record room.

Pronounced

*Sd/-
(S.K. Aggarwal)
District Judge, Ferozepur
UID No.PB0012
01.08.2017”*

It is pertinent to observe here that the same District Judge, acting as Presiding Officer, Lok Adalat, had passed the following order on 29.07.2017:-

*“Present: Petitioner in person
Sh. GS Gill, counsel for the respondent.*

Respondent has not appeared before Lok Adalat for reconciliation. Payment not made. Petitioner has requested for adjournment to make the payment. In view of the request, case is adjourned to 01.08.2017 for payment of entire maintenance pendente lite and litigation expenses.

*Sd/-
(S.K. Aggarwal)
District Judge, Ferozepur
Presiding Officer, Lok Adalat
UID No.PB0012
29.07.2017”*

The above said circumstances indicate that on 29.07.2017, the respondent-wife did not appear before the Lok Adalat in

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reconciliation proceedings, whereas the appellant-husband himself appeared in person, but did not make any payment and requested for adjournment. In view of this, the case was adjourned to 01.08.2017 for payment of entire maintenance *pendente lite* and litigation expenses.

Counsel for the appellant, on asking of the Court, informs that by now, the arrears of maintenance *pendente lite* have accumulated to Rs.20,000/- and litigation expenses determined by the Court are Rs.5000/-.

The appellant-husband has expressed his desire to clear the entire maintenance *pendente lite* and litigation expenses.

A perusal of order dated 01.08.2017 indicates that the appellant-husband did not appear before the Court to pay the entire maintenance *pendente lite* and litigation expenses, whereas he was represented by his counsel Mr. R.S. Khara. The counsel for the husband, in those circumstances, did not had any plausible and reasonable explanation for not making the payment of entire maintenance *pendente lite* and litigation expenses. The learned District Judge refused to grant adjournment to the counsel for the appellant-husband and opted to dismiss the petition for non-appearance of the appellant-husband himself.

The dismissal of the petition under Section 13 of the Hindu Marriage Act, in the present circumstances, appears to be dismissal under Order 9 Rule 8 CPC, for which the remedy lies under Order 9 Rule 9 CPC, which enables the appellant-husband to file an application

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under Order 9 Rule 9 CPC to satisfy the Court that there was sufficient cause for non-appearance on the date of hearing and claim for setting-aside of the dismissal order.

In the present case, no application seems to have been filed under Order 9 Rule 9 CPC. Besides this, we have considered the matter in the light of provisions of Order 17 Rule 1 CPC, which enable the Court to grant adjournment from time to time by recording the reasons for allowing adjournment(s). Provision of Order 17 Rule 2 CPC enables the Court to grant adjournment for not more than three times to a party for a particular purpose during the hearing of the petition.

In view of the above said provisions, it would have been reasonable for the lower Court to grant one more opportunity on some costs as per provisions of Order 17 Rule 2 CPC.

In the above said circumstances, we deem it appropriate to dispose of this petition with the observation that the present appeal is not maintainable before this Court.

However, in the interest of justice, a direction is issued that in case the appellant-husband files an application under Order 9 Rule 9 CPC within a period of 15 days along with the entire arrears of maintenance *pendente lite* and litigation expenses calculated till the date of filing of the application, the said application will be considered and allowed by the lower Court by imposing additional costs of Rs.5000/- upon the appellant-husband. In case the said amount is not

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paid within a period granted by the Court, it will be open to the lower Court to pass any appropriate order in accordance with law.

Disposed of in above terms.

[M.M.S. BEDI]
JUDGE

[AUGUSTINE GEORGE MASIH]
JUDGE

September 06, 2017
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Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No