

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.2013 of 2018
Date of Decision: 26.03.2018

Balkar Singh

....Petitioner (s)

Versus

Harpreet Kaur

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Sarju Puri, Advocate
for the petitioner(s).

HARI PAL VERMA, J. (Oral)

Petitioner-defendant has filed the present revision petition under Article 227 of the Constitution of India for setting aside the order dated 20.02.2018 (Annexure P-1) passed by the Family Court, SBS Nagar, whereby, the application moved by the respondent-plaintiff, for restoration of the civil suit, was allowed and the case was restored to its original number.

Briefly stated, the respondent-plaintiff had filed a civil suit for maintenance under Sections 18 and 20 of the Hindu Adoption and Maintenance Act, claiming arrears of maintenance, however, the same was dismissed in default by the Family Court vide order dated 24.10.2017 on account of non-appearance of the respondent-plaintiff. The respondent-plaintiff had moved an application dated 13.12.2017 for restoration of the

case with the plea that on the relevant date i.e. 24.10.2017, the respondent-plaintiff had to go for his personal work and he could not inform her counsel and other family members. It was pleaded that non-appearance on the part of the respondent-applicant was neither intentional nor willful, but due to some personal reasons.

Learned Family Court, vide order dated 20.02.2018, allowed the application moved on behalf of the respondent-applicant, which is subject matter of challenge in this revision petition.

Learned counsel for the petitioner has argued that the Family Court has restored the case to its original number on the basis of application, seeking restoration of the case, which was not accompanied by an application under Section 5 of the Limitation Act. Moreover, no sufficient cause was shown so as to condone the delay. In fact, the case was required to be restored under Order 9 Rule 4 CPC, but it has been restored under Order 9 Rule 9 CPC.

I have heard learned counsel for petitioner and perused the impugned order.

The respondent-applicant has filed the civil suit under Section 18 and 20 of the Hindu Adoption and Maintenance Act seeking maintenance and the same was listed for 24.10.2017 and on this date, neither the respondent-applicant, nor her counsel could appear and it was dismissed in default. Consequently, on 13.12.2017, the respondent-applicant had moved an application seeking restoration of the civil suit, which was allowed vide order dated 20.02.2018. Admittedly, the respondent-applicant was entitled to seek restoration of the civil suit within

30 days from 24.10.2017, without any application, which was in fact filed on 13.12.2017. In this manner, delay, if any, in filing the application is about 19 days, which is not inordinate in any manner. Instead of getting the matter decided on technicalities, the Court has rightly restored the case for its decision on merit.

Therefore, this Court does not find any illegality in the impugned order dated 20.02.2018.

Accordingly, the present revision petition is dismissed.

March 26, 2018
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No