

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

106

CM No.25233-CII of 2018 in/and
CR No.2214 of 2017 (O&M)
Date of decision:5.12.2018

Raja Ram Sharma

... Petitioner

versus

Meena and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.R.B.Gupta, Advocate,
for the petitioner
Mr.Shiv Kumar, Advocate,
for the respondent no.1.
...

AMOL RATTAN SINGH, J. (Oral)

CM No.25233-CII of 2018

By this application advancement of the date of hearing in the accompanying petition had been sought (with the petition otherwise standing adjourned to 9.1.2019) on the ground that the next date of hearing before the trial Court was 1.12.2018, (the application having come up for hearing on 30.11.2018). On that date, notice had been issued in this application, returnable today, with the trial Court directed to adjourn the matter to a date beyond today.

Today, Mr.Shiv Kumar, learned counsel for the non-applicant-respondent no.1 appears and with the consent of the parties, the accompanying petition is ordered to be taken up for final disposal today itself.

The application is therefore allowed.

CR No.2214 of 2017

By this petition, the petitioner challenges the order of the learned trial Court (District Judge Family Court-2, Faridabad), dated 2.3.2017, by which the written statements filed by the petitioner as also his parents have been 'taken off record'. The petitioner and his parents are the three defendants in a petition filed by respondent no.1 seeking custody of one of the two children of the petitioner and the said respondent.

Learned counsel for the petitioner submits that the petitioner put in appearance for the first time in response to notice issued in the petition by the trial Court on 1.12.2016, with the impugned order having been passed within 3 months and 1 day thereafter.

Mr.Shiv Kumar, learned counsel for respondent no.1, on the other hand submits that the conduct of the petitioner does not deserve any sympathy, in view of the fact that after a last opportunity was granted on 6.2.2017 by the trial Court to file a written statement by 17.2.2.107, on that date it was not filed on the excuse that the petitioner was admitted to hospital and respondents no.2 and 3, i.e. his parents, were attending to him.

He further points from the impugned order that the case was then adjourned to 21.2.2017 to enable the petitioner-defendant no.1 to file his written statement subject to him furnishing documents to show that he had been admitted to hospital. However, the only document that he could produce was a medical certificate issued by a Dental Surgeon showing that he had undergone Root Canal Treatment (RCT) on 17.2.2017 and was admitted to hospital for 3-4 hours.

Hence, learned counsel for respondent no.1 submits that with

the petitioner having obviously patently lied before the trial Court, he does not deserve the relief he is claiming in this petition.

Having considered the matter, though learned counsel for respondent no.1 is absolutely correct as regards the conduct of the petitioner and his co-defendants, because even if it is accepted at face value that he was admitted for 3-4 hours in a dental clinic for an RCT, that would be only on one particular day, which would not justify non-filing of the written statement for a long period of time; yet, keeping in view the fact that the case is one pertaining to the custody of a child and it was exactly 3 months and 1 day from the date that the petitioner is stated to have put in appearance before the trial Court (upon notice having been issued), when the impugned order was passed, I consider it appropriate that upon the petitioner paying costs to respondent no.1 as also to the District Legal Services Authority (the latter on account of his conduct), the petition should be allowed.

Consequently, upon the petitioner paying costs of Rs.10,000/- to respondent no.1 and Rs.5,000/- to the District Legal Services Authority, this petition is allowed, with the impugned order set aside. The petitioner would be allowed to file his written statement and thereby enter his defence in the petition, within 15 days from today.

The trial Court would make an endeavour to conclude the trial within a period of 6 months.

5.12.2018
pk/dinesh
Whether speaking/reasoned
Whether Reportable

(AMOL RATTAN SINGH)
JUDGE
Yes/No
Yes/No