

(111) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.3716 of 2018

Date of decision:21.09.2018

Sapna Sharma

.... Petitioner

Versus

Rahul Sharma

..... Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Ashish Naik, Advocate for the petitioner.
Mr. Arun Luthra, Advocate for the respondent.

B.S. Walia, J. (Oral)

[1] Revision petition has been filed praying for setting aside order Annexure P/1 dated 11.05.2018 passed by the learned Additional District Judge, Panchkula dismissing the application of the petitioner for setting aside order Annexure P/2 dated 25.07.2017 vide which the petitioner was proceeded against ex parte and further for allowing application Annexure P/3 dated 27.09.2017 seeking setting aside order dated 25.07.2017 as also to grant one opportunity to file the written statement and to participate in the proceedings pending before the learned Additional District Judge, Panchkula.

[2] Brief facts of the case leading to the filing of the revision petition are that the petitioner put in appearance in the divorce case filed by her husband before the learned trial Court on 01.04.2017 where after, the matter was taken up for reconciliation on 25.04.2017. On account of

reconciliation proceedings being unsuccessful, the case was adjourned from 10.07.2017 to 25.07.2017. However, on said date, the petitioner absented and did not put in appearance before the trial Court. Thereupon, the petitioner was proceeded ex parte and the case adjourned to 25.08.2017 for ex parte evidence. On 25.08.2017, work was suspended in the Courts on account of disturbance in the area. Resultantly, the case was adjourned to 27.09.2017. On said date the respondent-husband concluded his evidence and case was deferred to 27.10.2017 for arguments. On said date, the petitioner moved an application supported with her affidavit dated 27.09.2017 for setting aside ex parte proceedings ordered against her on 25.07.2017. However, the same was dismissed on 11.05.2018 by the learned trial Court by observing that the petitioner had been watching the proceedings, that the rape case instituted by her against the respondent-husband had culminated in his acquittal on 04.08.2016 and the appeal filed by her against the said judgment had also been dismissed by the High Court on 20.02.2018.

[3] Learned counsel for the petitioner has prayed for setting aside of the impugned order and grant of one opportunity to file written statement and permission to participate in the proceedings on the ground that in the eventuality of relief prayed for not being granted, great prejudice would be caused to her and that the learned trial court ought to have granted one opportunity even by imposing costs as deemed appropriate and imposition of such conditions as deemed appropriate.

[4] On the other hand, learned counsel for the respondent has vehemently opposed the plea on the ground that the conduct of the petitioner is such that the same dis-entitles her to indulgence being shown by this

cause for not putting in appearance on the day when she was proceeded ex parte. Learned counsel contends that the petitioner having failed to make out a case for setting aside the well-reasoned orders Annexure P/2 dated 25.07.2017 as also order Annexure P/1 dated 11.05.2018, the revision petition is bereft of merit, therefore, the same be dismissed.

[5] I have considered the submissions of learned counsel for the parties.

[6] Admittedly, the petitioner is facing a divorce petition filed by the respondent-husband. On consideration of the sequence of events leading to the passing of the impugned orders, I find that the petitioner has not been able to make out sufficient cause for not appearing in the case on the day she was proceeded ex parte. However, I am of the view that when an application has been filed for setting aside the ex parte proceedings, a divorce petition should not be allowed to be decreed uncontested. Hon'ble the Supreme Court in **GP Srivastava v. R.K. Raizada and others, 2000 (3) SCC 54** set aside an ex parte decree even though sufficient cause could not be shown by the party seeking setting aside of the ex parte order by holding that even if the party was found to be negligent, the other side could have been compensated by award of costs. Relevant extract of the aforesaid decision is reproduced as under :

“8. In the instant case, it is not disputed that the nephew of the counsel of the appellant had died in a road accident on the date of hearing and that the appellant himself was not at the station on account of his employment and illness. The mere fact of obtaining a certificate from a private doctor could not be made a basis for rejecting his claim of being sick. Both the Trial Court as also the High Court have adopted a very narrow and technical approach in dealing with a matter pertaining to the eviction of the appellant despite the fact that he had put a reasonable defence and had approached the Court for setting aside the *ex-parte* decree, admittedly, within the statutory period. Even if the appellant was found to be negligent,

the other side could have been compensated by costs and the *ex-parte* decree set aside on such other terms and conditions as were deemed proper by the Trial Court. On account of the unrealistic and technical approach adopted by the Courts, the litigation between the parties has unnecessarily been prolonged for about 17 years. The ends of justice can be met only if the appellant-defendant is allowed opportunity to prove his case within a reasonable time.

9. Under the circumstances, the appeals are allowed by setting aside the order of the High Court and of the Trial Court. The *ex-parte* Judgment and decree passed against the appellant is set aside on payment of costs of Rs. 5,000/- to the other side. The Trial Court is directed to afford the appellant opportunity to prove his case and expedite the disposal of the suit preferably within a period of six months from the date of receipt of the copy of this order.

Appeals allowed.”

[7] The petitioner had instituted a complaint against the respondent-husband of his having raped her, therefore, understandably, she was disturbed. Therefore, even if the petitioner has been found to be negligent, the respondent-husband can be compensated by award of costs instead of proceedings against her *ex parte*. It would be in keeping with the ends of justice if the *ex parte* proceedings are set aside and the petitioner allowed to participate in the proceedings though in a time bound manner and subject to payment of costs. At this stage, learned counsel for the respondent contended that if the impugned order was set aside, the orders be made conditional with a direction to the parties to conclude evidence within a time bound period.

[8] Learned counsel for the petitioner on the other hand states that the written statement is ready and copy thereof would be handed over to learned counsel for the respondent-husband during the course of the day and copy thereof filed before the learned trial court by way of application before

the date fixed before the learned trial Court.

[9] In the light of the position as noted above, the revision petition is allowed. The impugned orders Annexure P/1 dated 11.05.2018 and Annexure P/2 dated 25.07.2017 are set aside and the petitioner is permitted to file written statement in the manner indicated above subject to payment of costs of ₹ 2500/- to the respondent husband. On needful being done in the manner indicated above, written statement shall be taken on record and the learned trial Court shall proceed in the matter in accordance with law while granting reasonable opportunity to the parties to lead evidence by ensuring that the proceedings are concluded within a period of six months from today. It is further made clear that no adjournment would be granted to either of the parties for the mere asking. Adjournment if necessitated would be granted only on sufficient cause being made out and for reasons to be recorded in writing.

[10] Revision petition allowed as above.

(B.S. Walia)
Judge

21.09.2018
amit

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No