

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

120

[CR-4022-2018](#)
Date of decision: 2.7.2018

MOHIT ATTRI

... Petitioner

Versus

MEENU SHARMA

.... Respondent

CORAM : HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present:- Mr.Harminsterjeet Singh, Advocate
for the petitioner.

Harinder Singh Sidhu, J.

The present petition under Article 227 of the Constitution of India has been filed impugning the order dated 14.5.2018 (Annexure P-1) passed by Civil Judge (Sr.Divn.), Chandigarh-cum-Guardian Judge, Chandigarh whereby application of the respondent for setting aside the order dated 6.2.2017 whereby she was proceeded against ex parte has been allowed.

The petitioner is the husband and the respondent is wife. The petitioner had filed a petition under Sections 6, 13 of the *Hindu Minority and Guardianship, Act, 1956* read with Sections 8, 12 and 17 of *Guardian and Wards Act, 1890* for the grant of custody of minor son namely Porwin Attri aged about 8 years. The respondent filed a written statement to the application.

During the pendency of the petition, the petitioner moved another application for grant of visitation rights for the purpose of meeting his minor son twice in a month. The said application was allowed and visitation rights were granted to the petitioner to meet the child on every first and third Saturday in a month.

The respondent had also filed a similar application seeking custody of the her elder son namely, Rudra Attri, who was living with the petitioner. Application dated 10.11.2016 was moved by the petitioner for clubbing of both the cases. When the case was listed for filing of reply to the application on 6.2.2017, neither the respondent nor her counsel came forward to file response to the said application. Consequently, the court directed that the respondent be proceeded ex parte for not appearing or filing reply to the application. It is this order which has been impugned in the present revision petition.

While allowing the application, the court has noted that pursuant to the order granting visitation rights to the petitioner, the respondent had been bringing the minor child, namely Porwin Attri for the purpose of meeting with the petitioner. It was also noticed that even after the respondent was proceeded ex parte vide order dated 6.2.2017, the respondent used to come in the court along with her minor child in compliance with the order in order to facilitate his meeting with the petitioner. This fact was reflected in the various zimni orders dated 18.2.2017, 04.03.2017, 18.03.2017, 01.04.2017, 17.06.2017, 15.07.2017, 06.05.2017, 20.05.2017, 16.09.2017, 07.10.2017, 18.11.2017, 02.12.2017, 06.01.2018, 20.01.2018, 03.02.2018. The court thereby concluded that there was no deliberate or intentional delay on the part of respondent to avoid the court proceedings.

The case of the respondent was that she has not been informed by her counsel that she had been proceeded against ex parte. It was thereby contended that the respondent was not at fault. The court accepted this and concluded that as absence of the respondent in the proceedings was not

intentional but due to fault of her counsel, the application was allowed and the order dated 6.2.2017 directing that she be proceeded ex parte was set aside.

Learned counsel for the petitioner has contended that application was filed after a long delay of about 505 days and that no application for condonation of delay was filed.

This argument is without merit. It was specifically stated by the respondent in her application that she came to know about the order dated 6.2.2017 in which she had been proceeded ex parte, only on 6.1.2018. Though she was regularly in touch with her counsel, he never informed her about the order. The explanation in the application appears to be justified. The court has noted that the respondent had been appearing on different dates despite the order of ex parte proceedings. Accordingly, it cannot be said that the application has been filed after a long delay.

Even otherwise, the court on the basis of record, was satisfied that the absence of the petitioner was unintentional and not to avoid proceedings and set aside the order dated 6.2.2017..

There is no infirmity in the order passed by the court.

Petition is dismissed.

(Harinder Singh Sidhu)
Judge

02.07.2018

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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No