

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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FAO-M-313-2014 (O&M)
Date of Decision: 30.10.2018

RANJIT KAUR

....Appellant.

Vs.

GURNAM SINGH

.... Respondent.

**CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL**

Present: Mr. A.S. Manaise, Advocate
for the appellant.

Respondent *ex parte*.

RAKESH KUMAR JAIN, J. (ORAL)

The present appeal is directed against the judgment and decree dated 14.7.2014 passed by the Additional District Judge (Ad hoc) Fast Track Court, Gurdaspur, by which petition filed by the respondent-husband under Section 13 (ia) (ib) of the Hindu Marriage Act, 1955 (for short 'the Act') for dissolution of marriage by way of a decree of divorce on the ground of cruelty and desertion was allowed against the appellant.

On 12.9.2014, notice was issued to the respondent in the appeal for 22.1.2015 and record of the trial Court was also requisitioned. On the next date of hearing, Mr. Deepak Arora, Advocate appeared on behalf of the respondent and at one stage, the matter was also referred to the Mediation and Conciliation Centre of this Court to enable the parties to resolve their dispute amicably but on 5.4.2017, this Court had recorded that the mediation had failed and appeal was admitted. The

matter was taken up in the National Lok Adalat also but since there was no representation on behalf of the respondent, therefore, it could not be settled. The appellant had filed an application bearing CM No.132 of 2014, under Section 24 of the Act for grant of maintenance *pendente lite* and litigation expenses. The appellant filed another application bearing CM No. 20157-CII of 2017 for taking up the application bearing CM no.132 of 2014. The application bearing CM No.20157-CII of 2017 was allowed vide order dated 11.1.2018 after issuing due notice to the counsel for the respondent through the Registry of this Court, which had sent a letter bearing No. 12165 dated 7.11.2017, informing him about the said proceedings and the date of hearing. Civil Miscellaneous application bearing No. 132 of 2014 was ultimately decided by this Court on 11.1.2018 and maintenance *pendente lite* at the rate of ₹3,000/- was fixed and ordered to be paid with effect from the date of application i.e. August, 2014, with a rider that if any amount has been paid by the respondent-husband towards maintenance in the proceedings under Section 125 of the Cr.P.C., then the same shall be adjusted. The litigation expenses of ₹ 15,000/- was also awarded separately. Thereafter, the case was listed on 2.4.2018 for payment of the arrears of maintenance by the respondent. On 24.4.2018, the counsel for the appellant had brought to the notice of the Court that an amount of ₹1,15,000/- has been accumulated towards the maintenance *pendente lite*. This Court granted last opportunity to the respondent-husband to clear the entire arrears and it was made clear that in case arrears of maintenance *pendente lite* is not paid by the next date of hearing, a prejudicial order may follow. On 13.8.2018, the case was called twice

but no one put in appearance on behalf of the respondent. As a result thereof, the following order passed by this Court on 13.8.2018:-

“Case called twice.

No one has put in appearance on behalf of the respondent.

Defence of the respondent in appeal is struck off for non-payment of the arrears of maintenance. The respondent is also proceeded against ex parte.

Adjourned to 30.10.2018 for ex parte arguments in the appeal.”

The case, which is fixed for today for ex parte arguments, is taken up in the post lunch session after awaiting sufficiently for the appearance of the respondent through his counsel. However, no one has put in appearance.

Counsel for the appellant has, thus, made a submission for allowing the appeal by setting aside the order dated 14.5.2014, by which, the respondent-husband has been granted decree of divorce by the trial Court. In support of his submission, he has relied upon the judgments rendered by this Court in the case of **Subhash Vs. Sheela Devi** reported as **2007 (1) R.C.R. (Civil) 165**, **Shanti Devi Vs. Sham Lal**, **FAO No.23-M of 1990**, decided on 1.9.1993 and **Nirmal Kaur Vs. Kirpal Singh** reported as **2018 (1) R.C.R. (Civil) 263** to contend that if the husband is not willfully complying with the order of the Court for paying the arrears of maintenance *pendente lite* and his defence is struck off, then it would be useless to relegate the claimant/wife for realizing the amount by taking another lengthy course of litigation and the Court is empowered in terms of Section 151 CPC to make such order, as necessary, to meet the ends of justice and in this process, the Court can deny relief to the erring party and as such the pleadings of divorce would

have no existence in the eyes of law and judgment and decree of divorce granted by the trial Court can be set aside.

After hearing learned counsel for the appellant and keeping in view the aforesaid facts and circumstances, it is apparent that the respondent has been adamant in not resolving the dispute as the mediation proceedings had failed. Not only that when the matter was taken up in the National Lok Adalat, there was no representation on behalf of the respondent. The application filed by the appellant under Section 24 of the Act was decided after due notice to the counsel appearing on behalf of the respondent but he did not choose to contest the same and when the order was passed by this Court for the payment of arrears of maintenance *pendente lite* and granted last opportunity, the respondent did not come forward to make the payment and suffered the order of striking off his defence. In such circumstances, the judgments relied upon by learned counsel for the appellant, particularly, in the case of **Nirmal Kaur Vs. Kirpal Singh (supra)** would apply squarely to the facts and circumstances of this case and, thus, applicable to this case. Accordingly, we are also of the considered opinion that such act and conduct of the respondent, in not complying with the order passed by this Court, for the purpose of payment of maintenance *pendente lite* and litigation expenses, disentitles him from any sort of relief, much less the relief granted to him by the learned trial Court. Therefore, the present appeal is hereby allowed and the judgment and decree dated 14.7.2014 passed by the learned trial Court, granting divorce to the respondent on his petition against the appellant, is hereby set aside. It is needless to mention that the appellant may, if so advised, take necessary steps for the purpose of recovering the amount of maintenance *pendente lite*

granted by this Court, in accordance with law. Decree sheet be drawn accordingly.

(RAKESH KUMAR JAIN)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

30.10.2018.
SwarnjitS

Whether speaking/reasoned :	YES/NO
Whether reportable :	YES/NO