

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

**FAO No.M-188 of 2015 (O & M)
Date of Decision: 04.12.2018**

Sonia

.Appellant

Vs.

Deepak Kumar

.Respondent

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

Present: - Ms. Deepshikha Chauhan, Advocate
for the appellant.

Mr. Vivek Aggarwal, Advocate
for the respondent.

RAKESH KUMAR JAIN, J. (ORAL)

This appeal has arisen from the judgment and decree dated 11.02.2015 passed by the learned Additional District Judge, Kurukshetra by which petition filed under Sections 11 and 12 of the Hindu Marriage Act, 1955 ('Act' - for short) by the respondent-husband for annulment of marriage with the appellant-wife was allowed.

During the pendency of this appeal, the appellant-wife had filed an application bearing CMM-12-2016 under Section 24 of the Act for grant of maintenance pendente lite and litigation expenses. The said application was allowed after contest vide order dated 23.01.2018 and the respondent-husband was directed to pay ₹5000/- per month towards maintenance

pendente lite w.e.f. January, 2016 i.e. from the date of application and also ₹25000/- towards litigation expenses out of which ₹20000/- have already been paid.

Since the respondent did not pay the amount of maintenance, therefore, this court had passed the following order on 16.03.2018:-

“Counsel for the respondent submits that the respondent is unable to comply with order dated 23.01.2018 as he does not have a single penny.

In the interest of justice, before passing any adverse order against the respondent, we deem it appropriate to give a last opportunity to the respondent to pay the entire arrears of maintenance pendente lite.

Adjourned to 19.07.2018.

In case non-compliance of the order dated 23.01.2018, adverse legal consequences would follow.”

Thereafter the case was adjourned twice for awaiting the payment of maintenance pendente lite and litigation expenses by the respondent.

Learned counsel for the respondent has submitted that the respondent does not have any money to pay the maintenance pendente lite.

In view thereof, this Court has no alternative left but to strike off the defence of the respondent.

Accordingly, the defence of the respondent is hereby struck off.

Now the question would be as to whether in the absence of any defence available to the respondent, the judgment and decree passed by the

learned trial Court is to be set aside and the appeal is to be allowed?

The respondent had filed the petition under Sections 11 and 12 of the Act seeking annulment of his marriage on the ground that the appellant was married twice and her marriage was subsisting at the time when she contracted the alleged third marriage with the respondent. This defence of the respondent stands struck off because of the non-payment of maintenance pendente lite and litigation expenses. Therefore, there is no evidence on record led by the respondent for the purpose of seeking annulment of the marriage.

Thus, keeping in view the aforesaid facts and circumstances and in the absence of any defence available with the respondent, the present appeal is hereby allowed and the judgment and decree passed by the learned trial Court is hereby set aside.

Decree-sheet be prepared accordingly.

(RAKESH KUMAR JAIN)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

04.12.2018
A.Kaundal

Whether speaking /reasoned : Yes/No

Whether Reportable : Yes/No