

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. M-309 of 2015

Date of Decision: 12.11.2018

MONIKA RANI

....*Appellant*

VS.

SANDEEP KUMAR

...*Respondent*

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

Present: Mr. Sunil Garg, Advocate,
 for the appellant.

Respondent ex-parte.

RAKESH KUMAR JAIN, J. (ORAL)

This appeal is directed against the judgement and decree dated 10.03.2015 passed by the learned Additional District Judge, Jalandhar by which the petition filed for the dissolution of the marriage by way of a decree of divorce, filed under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') by the respondent-husband, was allowed on the ground of desertion.

The appellant has filed an application under Section 24 of the Act for seeking maintenance *pendente lite* and litigation expenses bearing No. CMM-127-2015, which was allowed on 12.10.2017 while awarding ₹2,000/- per month towards maintenance *pendente lite*, payable from the date of application i.e. May 2015 and ₹30,000/- as litigation expenses out of which ₹20,000/-, already paid, was order to be deducted. The case was then adjourned for the payment of balance litigation expenses and arrears of maintenance *pedente lite* for 21.02.2018 and the respondent was directed to clear the arrears of maintenance *pedente lite* calculated till 28.02.2018.

Thereafter, the case was adjourned time and again at the instance of the respondent to pay the arrears of maintenance *pendente lite*, balance of litigation expenses and last opportunity was granted to the respondent-husband by this Court vide order dated 31.05.2018 in which the following order was passed:-

“Last opportunity is granted to the respondent to clear the entire arrears of maintenance on the next date of hearing.

To come up for arguments on 24.07.2018.

It is made clear that in case of non-payment of arrears of maintenance on the next date of hearing, defence of the respondent will be struck off.”

Thereafter, following order was passed on 04.10.2018 by this Court:-

“Aggrieved by the decree of divorce granted to the respondent-husband, the wife has preferred this appeal.

During pendency of the appeal, the appellant-wife filed an application under Section 24 of the Hindu Marriage Act, which was allowed by this Court vide order dated 12.10.2017. A direction was issued to the respondent-husband to clear the entire arrears of maintenance pendente lite on 21.2.2018 on which date counsel for the respondent appeared before this Court and sought time to comply with the order dated 12.10.2017. Even when the case was taken up on 22.5.2018, the arrears were not cleared and the case was adjourned to 31.5.2018 on which date last opportunity was granted to the respondent-husband to clear the entire arrears of maintenance pendente lite. Another opportunity was granted on 24.7.2018 but the respondent opted to stay away from the Court. Neither he respondent nor his counsel appeared as a

result of which this Court was compelled to proceed against the respondent ex parte.

Since the record has been received, we have adjourned this case for ex parte arguments for today.

Case has been called. Neither the respondent nor his counsel has put in appearance to seek setting aside of the ex parte proceedings.

In above circumstances, we have been compelled to pass the order of striking off the defence of the respondent-husband besides being ex parte.

The defence of the respondent having been struck off and he being ex parte, adjourned to 12.11.2018, for final arguments in the appeal.”

In view of the aforesaid order, defence of the respondent husband was struck off on account of the non-payment of the arrears of maintenance *pedente lite* as well as the litigation expenses.

Learned counsel for the appellant has submitted that since the defence of the respondent-husband has been struck off, therefore, the entire evidence has been led by the respondent as the petitioner before the learned trial Court for seeking divorce against the present appellant has become nonest and therefore, in the absence of any evidence available on record, the case set up by the respondent-husband before the trial Court as a petitioner has become redundant.

After hearing learned counsel for the appellant and taking into consideration the aforesaid facts and circumstances, we are of the considered opinion that issue No. 3 framed by the trial Court to as to whether the respondent has deserted the petitioner? OPP, cannot be decided in favour

of the respondent-husband because his defence has been struck of by this Court on 04.10.2018 and the said proceedings has not been challenged by the respondent which has attained finality as of now.

Thus, we are of the considered opinion that in view of the aforesaid facts and circumstances, present appeal has the merit and the same is hereby allowed, the judgement and decree of divorce dated 10.03.2015 granted on the ground of desertion by the Additional District Judge, Jalandhar is hereby set aside.

Decree sheet be prepared accordingly.

[RAKESH KUMAR JAIN]
JUDGE

November 12, 2018
Ess Kay

[ANUPINDER SINGH GREWAL]
JUDGE

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