

FAO No. M-62 of 2016

Date of Decision:22.11.2018

KUSUM

...APPELLANT

Versus

JITENDER

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE AVNEESH JHINGANPresent: Mr. Y.P. Malik, Advocate
for the appellant.

None for the respondent.

RAKESH KUMAR JAIN, J. (ORAL)

This appeal has arisen from the judgement and decree dated 06.01.2016 passed by the Additional District Judge, Karnal by which a petition filed under under Section 13 of the Hindu Marriage Act, 1955 (for short "the Act") by the respondent-husband for dissolution of his marriage by way of a decree of divorce was allowed.

During the pendency of this appeal, efforts were made by way of mediation for re-union of the party. However, the mediation has failed because the respondent did not attend the mediation proceedings. Thereafter, an application under Section 24 of the Act, filed by the appellant-wife, was allowed by this Court on 15.03.2018 in which the appellant-wife was awarded ₹5000/- per month maintenance pendente lite and ₹30,000/- as litigation expenses but the respondent did not appear on

21.05.2018 to pay the interim maintenance pendente lite and litigation expenses. On 17.7.2018, the counsel for the respondent sought time to pay the arrear of maintenance pendente lite and litigation expenses and thereafter he stopped appearing.

On 12.09.2018 the following order was passed by this Court:-

“The case has been called twice, but no one has put in appearance on behalf of the respondent. It appears that arrears of maintenance have been accumulated to the extent of ₹1,25,000/-. Respondent is proceeded against ex parte and his defence, in the present appeal, is struck off.

Records has already been received.

For ex parte arguments, adjourned to 22.11.2018.”

Today this case is called for hearing but the respondent remains unrepresented as neither he himself put in appearance nor through his counsel.

Learned counsel for the appellant has submitted that in view of the fact that the defence of the respondent/husband has been struck off, the present appeal may be allowed because in the absence of any evidence, the pleadings cannot take the place of proof specifically when the pleadings are denied by the appellant/wife.

After hearing counsel for the appellant and examining the record, we are of the considered opinion that the present appeal deserves to be allowed as the respondent husband cannot take advantage of his own wrong by not complying with the order passed by this Court to pay the

arrears of maintenance and litigation expenses and remain absent through out from the date of issuance of notice. It is also pertinent to mention here that the respondent-husband was also non-cooperative during mediation as he never appeared before the Mediator.

In view of the above, the present appeal is hereby allowed and the impugned judgement and decree dated 06.1.2016 is set aside. Decree shall be prepared accordingly.

(RAKESH KUMAR JAIN)
JUDGE

(AVNEESH JHINGAN)
JUDGE

November 22, 2018

Jyoti-IV

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