

**247-2 IN THE HIGH COURT OF PUNJAB AND HARYANA
 AT CHANDIGARH**

CRR(F)-364-2018 (O&M)
Date of Decision : 21.08.2019

Raj Kumar

.....Petitioner

versus

Harvinder Kaur and others

....Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Amrit Jaiswal, Advocate
for the petitioner.

Mr. Karan Yuvraj, Advocate
for the respondents.

FATEH DEEP SINGH, J. (ORAL)

This revision is, by the aggrieved husband-Raj Kumar, preferred against his wife-Harvinder Kaur and two minor kids, a daughter and a son, whereby, he has sought to lay challenge to order dated 06.02.2018 declining the prayer of the petitioner/husband for setting aside *ex parte* order dated 18.08.2015 and which has consequently led to passing of *ex parte* judgment/order of maintenance dated 20.08.2015.

The brief facts that necessitates the reproduction are that the wife and the children filed, against the present petitioner/husband and father, respectively, an application under Section 125 Cr.P.C.

seeking maintenance allowance. The husband appeared before the Court concerned and filed written reply. An order of interim maintenance was passed by the Court concerned on 16.02.2015, whereby, the husband was directed to pay ₹7,000/- per month (₹3,000/- to the wife and ₹2,000/- each to the children). The husband neither paid the maintenance allowance so awarded nor thereafter appeared, as a consequence of which, he was proceeded against *ex parte* by the learned Trial Court on 18.08.2015 culminating into the impugned judgment on 20.08.2015.

Learned counsel for the petitioner *inter alia* contends that the husband and the wife had settled their dispute in the year 2011 by a written document and for which the husband has filed a divorce petition on 01.06.2011 but the wife backed out of the same and, therefore, the husband was under impression that the application of the wife under Section 125 Cr.P.C. had already been dismissed on 10.01.2017. These submissions have sought to be countered with much force and demands by learned counsel for the respondents arguing that there is nothing suggestive to this and that the husband having appeared before the Court, participated in the proceedings by filing reply and has subsequently, absented and did not put in appearance and after a long hiatus has strongly filed the application under Order 9 Rule 13 CPC which is not permissible under the Code of Criminal Procedure and therefore, on account of this intentional denial of the legitimate right of the dependents with a

view to put them to more harassment, had filed the present application which has been the observation of the Court below.

Appreciating the submissions of the two sides and in light of the records, it is duly conceded at the bar and so is reflected from the records that the husband had appeared in the proceedings and filed his written reply and thereafter, did not put in appearance and after the orders were passed in August, 2015, he after a belated time in February, 2017, had filed the application for setting aside the order for which in spite of queries of this Court, learned counsel for the petitioner could not convince what bonafide and convincing grounds have come about from the side of the petitioner, even the interim maintenance allowance so awarded, by the Court, which has become surmounting arrears, have not been paid by the husband. The claim that the husband was under impression that the application of the wife and the children for maintenance was dismissed by the Family Court, Ambala, does not have any basis and rather appears to be a novice design by the disgruntled husband to undo the facts of *ex parte* judgment. There is nothing suggestive to substantiate the reasons that have come about in the application of the husband for setting aside the *ex parte* proceedings.

The Court below while disposing off the application of the husband under Order 9 Rule 13 CPC (which in fact, was inapplicable to the proceedings under Section 125 Cr.P.C. which are to be conducted by the provisions of Code of Criminal Procedure) had

clearly remarked that the plea of the husband that his Advocate expired in May, 2015, does not holds much grounds for which *ex parte* orders have come about on 18.08.2015 much thereafter, and has rightly drawn the conclusion that it is an endeavour by the husband to escape from his obligation of paying maintenance merely because the petitioner has been proceeded *ex parte* is no *ipso-facto* a ground to set aside the *ex parte*. After he puts in appearance, the party is under obligation to satisfactorily establish and prove, how he has been unable to put in appearance before the Court resulting in the *ex parte* proceedings.

Learned counsel for the petitioner could not point out even a single cause which is sufficient enough to condone the act of the petitioner. More so, the amount of arrears which the husband has failed to pay, in spite of the endeavours of the Court through out the proceedings of setting aside the *ex parte* orders and his reluctance to abide by the orders, are sufficient enough to throw light on the conduct of the husband which is reflective of his insolence and arrogance in the obedience of the orders of the Court.

Thus, the petition being utterly meritless, stands dismissed. Consequently, the application seeking stay has been rendered infructuous.

21.08.2019

Neha

Whether speaking/reasoned

Whether Reportable

(FATEH DEEP SINGH)

JUDGE

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:

Yes/No

Yes/No