

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

Sr. No.119

CR No.5218 of 2019 (O&M)

Date of decision: 29.08.2019

Kulbir Singh

....Petitioner

versus

Karamjeet Kaur and another

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Gurmandeep Singh Sullar, Advocate
for the petitioner.

* * *

DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 29.07.2019 passed by the Additional Principal Judge (Family Court), Ambala (for short – the Trial Court) striking off the petitioner's defence for the reason that in spite of grant of last opportunity he had not filed his written statement.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the petitioner and respondent No.1 filed a joint petition under Section 13-B of the Hindu Marriage Act, 1955 (for short – the Act) seeking therein the grant of a decree of divorce by mutual consent. In pursuance to such petition, divorce was granted to the petitioner and respondent No.1 through judgment and decree dated 20.02.2018. Thereafter, the respondents filed a petition under Section 25 of the Act seeking therein grant of permanent alimony to them. On being put to notice, the petitioner appeared before the Trial Court. The matter was then

referred to the Mediation Centre at Ambala. However, on 17.07.2019, mediation between the parties failed and thereafter, the respondents' petition seeking therein permanent alimony was adjourned to 29.07.2019 for filing of a written statement by the petitioner. However, on that date, when the petitioner did not file his written statement, his defence was ordered to be struck off through the order under challenge in the present proceedings.

Learned counsel for the petitioner submitted that though the petitioner had put in appearance before the Trial Court on 05.02.2019, he did not file his written statement as thereafter talks of compromise were going on between the parties. On 17.07.2019, when such talks failed to fructify, the Trial Court granted only 12 days to the petitioner to file his written statement which according to learned counsel for the petitioner was too short. It is submitted that the written statement of the petitioner, to be filed before the Trial Court, has already been annexed with the present petition as Annexure P-5 and if an opportunity is granted by this Court, the same can be filed before the Trial Court at any time.

On 05.02.2019, the petitioner had put in appearance before the Trial Court but thereafter, as informed by learned counsel for the petitioner, mediation proceedings were going on between the parties which ultimately failed on 17.07.2019. The impugned order striking off the petitioner's defence just 12 days thereafter, is found to be rather harsh especially when the petitioner has already prepared his written statement and appended the same to the present petition.

In view of the above and in line with the principles of natural justice as also for the reason that the petitioner may not be precluded from raising his defence at the threshold of the litigation that he faces, subject to

payment of Rs.10,000/- as costs, to be equally divided amongst the respondents, the impugned order is set aside and the petitioner is granted one weeks time to file his written statement.

The Trial Court shall ensure that the awarded costs ordered to be paid by the petitioner to the respondents are transferred to their bank account(s).

The petition is allowed in the above terms.

If the respondents are aggrieved by passing of the present order they are at liberty to approach this Court by filing of an appropriate application.

(DEEPAK SIBAL)
JUDGE

August 29, 2019

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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No