

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.6953 of 2015 (O&M)

Date of Decision:22.01.2019

Somwati

. Appellant

Vs.

Ved Parkash

. Respondent

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

Present: - Mr.S.P. Soi, Advocate,
for the appellant.

Ms.Eshjot Walia, Advocate,
for the respondent.

RAKESH KUMAR JAIN, J. (ORAL)

This appeal has arisen from the judgment and decree dated 17.9.2015 by which a petition filed under Section 13 of the Hindu Marriage Act, 1955 [for short 'the Act'] by the appellant-wife against her husband for dissolution of their marriage on the ground of cruelty was dismissed.

This appeal was admitted on 12.01.2016. Thereafter, two applications bearing CMM No.140 of 2016 and CMM No.83 of 2016 under Section 24 of the Act were filed. CMM No.140 of 2016, filed by the respondent/husband, was dismissed and CMM No.83 of 2016, filed by the appellant/wife, was allowed by this Court vide order dated 12.12.2017 by which the amount of ₹3000/- per month was awarded to the appellant towards maintenance *pendente lite* to be paid by the respondent-husband w.e.f. April, 2016 after adjusting the sum of ₹2000/- which was independently awarded to the minor child. The respondent/husband did not

pay the said amount rather he was proceeded against *ex parte* on 30.5.2018.

In view of the said order, the following order was passed on 25.7.2018: -

“Heard on application under Order 9 Rule 7 read with Section 151 CPC for setting aside the ex parte order dated 30.05.2018 against the applicant/respondent-husband.

Counsel for the non-applicant/appellant has objected to the setting aside of the exparte proceedings on the ground that the respondent/husband has not paid the amount of maintenance pendente lite, on the basis of order dated 12.12.2017.

Delay of 23 days in filing the application under Order 9 Rule 7 read with Section 151 CPC for setting aside the exparte order, is condoned.

Exparte proceedings against the respondent-husband are hereby set aside, subject to condition that the applicant/respondent husband shall pay the entire arrears of maintenance pendente lite by the next date of hearing.

Both the miscellaneous applications are allowed accordingly.

Appeal is adjourned to 28.11.2018 for arguments.

It is made clear that if the arrears of maintenance pendente lite are not paid till said date, the application for setting aside exparte proceedings will be deemed to have been dismissed, resulting

in striking of the defence of the respondent in this appeal.

Thereafter the case has been adjourned many times on the request of the counsel for the parties and for the purpose of compliance of the order dated 25.7.2018 but the respondent, who has put in appearance today along with his counsel, has submitted that he has no money to pay in compliance of the order dated 12.12.2017. In such circumstance, there is no alternative with us but to strike off the defence of the respondent/husband.

At this stage, the respondent/husband has submitted that he is ready and willing for the dissolution of his marriage with the appellant/wife on the condition that he would not ask to pay the amount towards permanent alimony or towards maintenance *pendente lite*. The appellant, who has put in appearance today along with her counsel, has made a statement that she would not claim either maintenance *pendente lite* awarded by this Court, permanent alimony or anything from the respondent/husband if the petition filed by her under Section 13 of the Act is allowed.

Thus in view thereof, the present appeal is allowed and the marriage of the parties which was solemnized on 4.2.2001 is hereby dissolved by a decree of divorce. Decree-sheet be also prepared accordingly.

(RAKESH KUMAR JAIN)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

22.01.2019
Vivek

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