

FAO No.M-5229 of 2017 (O&M)

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

**FAO No.M-5229 of 2017 (O&M)
Date of decision:05.03.2019**

Neelam **...Petitioner**

Vs.

Mukesh Kumar **...Respondent**

Coram: **Hon’ble Mr. Justice Rakesh Kumar Jain
 Hon’ble Mr. Justice Harnaresh Singh Gill**

Present: Mr. R.B.Garg, Advocate, with
 Ms. Gitanjali Chhabra, Advocate, for the appellant.

Mr. J.S.Dhaliwal, Advocate,
for the respondent.

Rakesh Kumar Jain, J. (ORAL)

This appeal has arisen from the judgment and decree dated 30.09.2015, by which petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as the “Act”) for seeking dissolution of his marriage by a decree of divorce was allowed.

In brief, the marriage of the appellant was solemnized with the respondent on 10.02.2007 as per Hindu rites and ceremonies. They were blessed with a daughter. It is alleged that the appellant-wife deserted the respondent-husband on 05.03.2009 and also treated him with cruelty, therefore, a petition was filed by the respondent-husband under Section 13 of the Act for seeking dissolution of his marriage by a decree of divorce. The appellant had allegedly appeared through her counsel before the Family Court but did not file the reply and also stopped appearing,

therefore, she was proceeded against ex-parte vide order dated 17.09.2015. The Family Court, after recording the ex-parte evidence of the respondent-husband, granted him the decree of divorce on 30.09.2015. Aggrieved against the said judgment and decree dated 30.09.2015, the present appeal was filed in which, after notice, the respondent was asked to pay ₹25,000/- towards interim litigation expenses to the appellant-wife, which was paid by him on 03.04.2018. The appellant had filed an application bearing CMM-100-2017 under Section 24 of the Act qua maintenance *pendente lite* and litigation expenses. The said application was allowed vide order dated 04.05.2018, after contest, and the respondent-husband was directed to pay the maintenance *pendente lite* @ ₹6,000/- per month with effect from the date of application i.e. July, 2017 and ₹30,000/- towards litigation expenses, out of which ₹25,000/-, already paid as interim maintenance, was ordered to be adjusted. The case was then adjourned to 17.08.2018 for the payment of entire amount of arrears of maintenance *pendente lite* calculated upto 31.08.2018 and litigation expenses.

The case was also referred for mediation in order to explore the possibilities of a compromise. The appellant had given the calculation of the amount due towards the maintenance *pendente lite* and litigation expenses, which was of ₹88,323/-, but the respondent-husband did not pay the amount and on 29.11.2018, besides giving him last opportunity, it was made clear that if the aforesaid amount is not paid on the next date of hearing, then the appeal shall be allowed by striking of his defence. Thereafter, on 17.12.2018, on the request of the counsel for the respondent, the case was adjourned to 26.02.2019 and the respondent was directed to bring the amount of maintenance *pendente lite* on the adjourned date. On

the adjourned date, i.e. 26.02.2019, counsel for the respondent was not present and the case was adjourned for today in the interest of justice.

Today, counsel for the appellant has submitted that the outstanding amount of arrears of maintenance *pendente lite* and the litigation expenses comes to ₹1,06,323/- but the counsel for the respondent again prays for an adjournment.

The request made by the respondent-husband for adjournment is hereby declined in view of the per entry order dated 29.11.2018 by which it was made clear that in case the amount of maintenance *pendente lite* and litigation expenses is not paid, then the appeal shall be allowed by striking off the defence of the respondent. Thus, the defence of the respondent is hereby struck off.

Learned counsel for the appellant has referred to a decision of the Supreme Court rendered in the case of **Hirachand Srinivas Managaonkar vs. Sunanda**, Civil Appeal No.1473 of 1999, decided on 20.03.2001 to contend that the decree of divorce can be declined on the ground that the husband has failed to pay the maintenance despite the order of the Court.

We have perused aforesaid decision of the Supreme Court in which the question for determination before the Court was as to “*whether the husband who has filed a petition seeking dissolution of the marriage by a decree of divorce under Section 13(1-A)(i) of the Act can be declined relief on the ground that he has failed to pay maintenance to his wife and daughter despite order of the Court?*” The said question was answered in affirmative by the Supreme Court.

Thus, while taking into consideration the entire facts and circumstances much-less the fact that the respondent has been making lame

excuses, one after the other, to avoid the payment of maintenance *pendentee lite* and litigation expenses awarded by this Court while deciding the application filed by the appellant under Section 24 of the Act despite the fact that he was warned vide order dated 29.11.2018 that if the amount is not paid, the appeal shall be allowed by striking of his defence, the present appeal is hereby allowed while having support of the decision of the Supreme Court in **Hirachand Srinivas Managaonkar's case (supra)** and the judgment and decree dated 30.09.2015 passed by the Family Court in favour of the respondent-husband is set aside, though without any order as to costs.

(Rakesh Kumar Jain)
Judge

March 05, 2019
vinod*

(Harnaresh Singh Gill)
Judge

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No