

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No.3255-2018 (O&M)

Decided on : 04.12.2019

Shakti Singh

... Appellant

Versus

Savita & others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr.Ram Pal Verma, Advocate, for the appellant.

Mr.Suneel Ranga, Advocate, for respondents No.1 to 3.

G.S. Sandhawalia, J. (Oral)

Challenge in the present appeal, is to the judgment dated 26.04.2017, passed by the Addl.District Judge, Panipat in the petition filed under Section 3 of the Prohibition of Child Marriage Act, 2006, whereby the marriage between the appellant and respondent No.1 has been declared null. Directions have also been issued to return the dowry articles as mentioned in Ex.P8 and to pay maintenance @ Rs.5000/- per month until her re-marriage, w.e.f. passing of the said judgment.

The present appeal is also barred by 351 days in filing. The said application has been opposed by counsel for respondents No.1 to 3, who are the wife and her parents. The ground given in the application for condonation of delay is that during the pendency of the proceedings, appellant had been convicted and sentenced to 7 years imprisonment, for the offences under Section 376 IPC. He was on bail and came to know about the impugned judgment and therefore, the present appeal has been filed. It is to be noticed that the appellant had been proceeded against ex parte,

during the pendency of the proceedings which were initiated on 11.04.2014.

Respondents have submitted that the sentence had been suspended by this Court on 13.07.2015 and therefore, the appellant was on bail and could not take the ground that he was not aware of the proceedings. It has been admitted that FIR had been registered by respondent No.1 under Section 376, 377, 328, 506, 34, 120-B IPC and Section 4 of POCSO Act, 2012. The averments made in the application were, accordingly, denied.

Keeping in view the fact that a dispute, as such, has arisen within the matrimonial bond as the marriage took place on 20.04.2013 and the fact that the appellant was in custody during the pendency of the proceedings, this Court is of the opinion that sufficient cause, as such, has been made out to condone the delay of 351 days in filing the appeal. From the record it transpires that the appellant has been produced in pursuance of the production warrant before the Trial Court, though he had been on bail, thereafter. There has been a lapse on his part in not looking after the litigation in which he had been already proceeded ex parte on 10.12.2015. In such circumstances, the issue had been decided at his back and therefore, the other side can be compensated by imposing costs for the conduct of the appellant.

A perusal of the record would go on to show that initially, on the application moved on 06.08.2014 by respondent No.1, for issuance of production warrants, the appellant was produced by the jail authorities on

08.09.2014. The parents had filed an application under Order 1 Rule 10 CPC, to bring them on record and written statement was filed on 12.02.2015 by the counsel. The application for impleadment was allowed on 20.05.2015 and the father of the respondent No.1 was brought on record as the petition had been filed through the mother.

Counsel for the appellant did not put in appearance on 10.12.2015, which led to the ex parte proceedings passed on 11.12.2015 and resultantly, interim maintenance was also ordered. Eventually, the order was passed on 26.04.2017, as noticed above. It is not disputed that the appellant had remained in custody and the written statement had been filed when he was in jail and had only been released from custody on 13.07.2015, by this Court, after he had been convicted, as per the case of the respondents themselves.

In such circumstances, this Court is of the opinion that on payment of costs and on account of the fact that adequate opportunity should be given to defend the proceedings, the order dated 26.04.2017 is liable to be set aside. The appellant should be given due opportunity to put forward his case and the interest of respondent No.1 can, thus, be protected by imposing costs of Rs.5000/-, to be paid to respondent No.1, by way of demand draft, for setting aside the ex parte order. It is pertinent to notice that an effort had been made to settle the dispute with the help of Mediation & Conciliation Centre of this Court and both parties had been asked to come present but on account of adamant stands, the matter could not be resolved. It is made clear that the order setting

aside the judgment is conditional to the costs being paid on the next date of hearing, when the parties are to put in appearance before the District Judge, Panipat, i.e. on 07.01.2020. It is made clear that if the amount is not paid on the said date, the order impugned dated 26.04.2017 shall come into force and the present appeal will be deemed to have been dismissed.

DECEMBER 04th, 2019
SAILESH

(G.S. SANDHAWALIA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>