

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 482 of 2020

Date of Decision: 23.1.2020

Radha Rani

...Petitioner

Vs.

Mahadeep Singh

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. N.K. Bhalla, Advocate
for the petitioner.

RAJIV NARAIN RAINA, J. (Oral)

1. This is a petition filed under Article 226 of the Constitution of India by the wife in a matrimonial matter against the order of the Family Court, SAS Nagar, Mohali striking off the defence of the respondent/wife (petitioner in this case). The law to be considered is in Order VIII Rule 1 CPC.

2. Learned Judge has passed the order on the ground that the period of 90+30 days [maximum 120 with grace period] for defendant to put in his written statement has elapsed. It has been observed by him, that in these circumstances, the court is left with no other option except to strike off the defence.

3. In review of the order, I find an error in this line of thinking, for the reason that it is not a commercial dispute the court was seized of for the judge to be left with no option except to bar the reply. In non-

commercial disputes and particularly in matrimonial matters with parties litigating in a divorce petition, there is no cast iron rule to adhere to, where the Court would have “no option” but to strike off the defence on the expiry of 90 days in a petition under Section 13 of the Hindu Marriage Act, 1956 where pleadings are in the nature of evidence unlike in civil suits for determining civil rights of the parties. There must be some flexibility shown by Tribunals and courts of justice in acceptance of defence by the respondent to resist divorce by lawful means of which the written statement is the nucleus.

4. The distinction is now sharply clarified between the commercial and non-commercial cases, which the latter type might be family disputes to bring peace and harmony through contest and matrimonial matters to reconcile disharmony. Even greater sensitivity must be shown by the court in matrimonial matters which cannot be compared to the standards of ordinary civil litigation where the provisions of Order VIII Rule 1 CPC may be strictly applied as between warring parties to reconcile their rights by adjudication. The non-vigilant in commercial disputes can be shown the door on the 121st day from due service of the plaint on the defendant.

5. Talking of options, the judge could have given a warning or a last opportunity to the petitioner to file her written statement or put her to such terms as was deemed fit as an alternative or to have asked the petitioner how strongly he might want to oppose an opportunity for

a contested divorce but nothing of this sort was done or is mentioned in the impugned order dated 10.12.2019, if it does not already exist in the order sheets, which have not been produced nor would be necessary to, in a matrimonial case.

6. The only just and sufficient cause and purpose of putting the petitioner to such terms as were deemed appropriate would have been only to enable her to properly defend the divorce petition otherwise she would be non-suited at the beginning of the commencement of proceedings, crippling her defence irretrievably. And it would hardly bring any solace to her that she could produce or cross-examine witnesses of the divorce seeker in absence of her pleadings on record.

7. In commercial matters the Supreme Court in M/s SCG Contracts India Pvt. Ltd. Vs. K.S. Chamankar Infrastructure Pvt. Ltd. and others, 2019 (2) RCR (Civil) 249 has taken a strict view on filing written statements to be unexplainable beyond 120 days from the date of service.

8. In non-commercial matters, their Lordships of the Supreme Court by an order of this month dated 20.1.2020 in Civil Appeal No. 433 of 2020, Desh Raj Vs. Balkishan (D) through proposed LR Ms. Rohini, decided by 3-Judge Bench have taking a lenient view on Order VIII Rule 1 CPC relying on the earlier decisions including in Salem Advocate Bar Association Vs. Union of India, 2002 (3) RCR (Civil) 530 interpreting the 1976 amendment to the Code of Civil Procedure,

that shutting out the written statement to look at the reasons of delay caused by extreme hardship or delays occurring due to factors beyond the control of parties despite proactive diligence may be just and equitable instances for condonation of delay may be permitted.

9. Although delay in filing written statement cannot be encouraged and strictness is required to prevent any protraction of the trial, but the Court would also examine the foreclosure from the human angle to see where the balance of convenience would lie in accepting or dismissing request for permission to file reply beyond time statutorily fixed in Proviso to Rule 1, Order VIII of the amended CPC.

10. The working of this Court in such matters is largely meant to do substantial justice in matrimonial disputes and not to take strict and too technical a view of the procedural law especially when the respondent is the wife and the delay is neither willful nor intentional but has been attributed to the slackness of her counsel in defending the case.

11. Though the impugned order is not technically flawed, but still this Court steps in to serve the ends of substantial justice and therefore, considers it fit to allow this petition by setting aside the impugned order. The petitioner may file her written statement within 10 days from the next date of appearance already fixed i.e. 4.2.2020, failing which the impugned order will stand revived.

12. I have not put the respondent to notice of the petition to hear him. This is to avoid delay and expense which would result to him, in

case summoned by Court, when the result achieved today is predictable. This is because no prejudice can be said to be caused to him by this order as its purpose is only for a contested divorce proceeding.

13. There will be no costs on the petitioner-wife as a condition precedent for acceptance of the petition, as she may ill-afford it and which may needlessly add to her plight.

14. Accordingly, the petition is allowed and the impugned order is set aside.

(RAJIV NARAIN RAINA)
JUDGE

23.1.2020
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Whether speaking/reasoned : *Yes*
Whether reportable : *Yes*