

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

CRR No.1415 of 2019 (O&M)
Date of Decision: January 14, 2020

Anil Sharma and others

...Petitioners

Versus

Vandana Shama

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Anurag Singh Tagra, Advocate
for the petitioner.

Mr. Ranjit Singh Dhiman, Advocate
for the respondent.

JAISHREE THAKUR, J. (Oral)

1. This is a criminal revision that has been filed seeking to challenge the order 27.02.2017 passed by the trial court whereby, the application filed by the petitioners for setting aside the ex parte order dated 10.07.2015 has been dismissed as well as order dated 02.02.2019 passed by the lower Appellate Court whereby, the appeal was also dismissed.

2. Counsel for the petitioners herein prays for two effective opportunities to lead evidence in the case that has been filed under the Protection of Women from Domestic Violence Act, 2005 (for short 'DV Act'). It is contended that they did not put in an appearance before the trial court on account of the fact that they have not been instructed by the counsel to do so and it is only when the execution petition had been filed

that they were made aware that they had been proceeded ex parte. It is submitted that to establish their bona fide, the petitioners herein have cleared all arrears of interim maintenance, as assessed by the trial court and would continue to do so till the final decision of the case.

3. Per contra, learned counsel appearing on behalf of the respondent-wife vehemently opposes the said criminal revision on the ground that the conduct of the petitioners is such that does not warrant any interference by this court. It is submitted that against the order of interim maintenance that has been passed by the JMIC, Chandigarh, an appeal had been filed, which appeal was dismissed with a direction to the parties to appear before the trial court on 04.02.2016, however, despite the said order, the petitioners herein did not put in an appearance primarily to delay the proceedings that were initiated under the DV Act. It is also contended that the petitioners herein are habitual defaulters in putting appearance before the courts by contending that they had been proceeded against ex parte on 10.07.2015, after the interim maintenance had been awarded.

4. I have heard counsel for the parties and have taken note of the fact that the petitioners herein have cleared all arrears of interim maintenance as on date and the question whether the petitioners ought to be allowed to have the ex parte order set aside, needs to be considered.

5. A plea has been taken by counsel for the petitioners that they were not made aware of the orders passed by the Addl. Sessions Judge, Chandigarh, by the counsel appearing on behalf of the petitioners therein. Consequently, they were not aware of the fact that they had to put in an appearance before the trial court on 04.02.2016. Resultantly, an ex parte

order came to be passed. It is argued by counsel for the petitioners that only when the execution petition was filed that they were made aware that they had been proceeded against ex parte.

6. In view of the fact that the petitioners herein have cleared all arrears of interim maintenance and counsel for the petitioners has stated at bar that the petitioners would continue to make the said payment of interim maintenance by 7th of every month, this court is inclined to set aside the impugned ex parte order, by giving two effective opportunities to the petitioners to lead their entire evidence at their own risk and cost. This order has been passed keeping in view the categorical statement that has been made at the bar that the petitioners were not made aware of the proceedings in the appeal whereby, they have been directed to appear before the trial court and also keeping in mind that a person should not be made to suffer on account of lapse that might have occurred on the part of his counsel. Moreover, by setting aside the impugned ex parte order, no prejudice would be caused to the respondent-wife except some delay, for which she can be compensated by payment of costs, which are assessed at ₹ 15,000/-.

7. The criminal revision stands allowed with the aforesaid directions. The parties would appear before the trial court on 03.02.2020, on which date first of all payment of costs would be made by the petitioners to the respondent and thereafter, the trial court would proceed further.

January 14, 2020

vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No