

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

**CR No. 2516 of 2020(O&M)
Date of Decision: 17.11. 2020.**

Ajay Kumar

..... PETITIONER

Versus

Kuldeep Kaur

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Vishal Sharma (Vasudeva), Advocate
for the petitioner.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

This petition has been filed for setting aside of order dated 09.11.2020, passed by the learned Principal Judge, Family Court, Gurdaspur, whereby the objections (Annexure P-4) filed by the petitioner-JD, have been dismissed. It is further prayed that the execution application filed by the respondent-wife be dismissed.

The undisputed facts are that a petition under Section 13 of the Hindu Marriage Act (for short 'Act'), was filed by the petitioner seeking divorce from his wife (respondent) on 19.10.2016. During pendency of the said proceedings, the petitioner and his wife reconciled their differences and the respondent-wife agreed to rejoin the company of the petitioner. Petition for divorce was accordingly dismissed as withdrawn on 09.12.2017 (Annexure P-1). Thereafter, due to differences still arising between the parties, the petitioner has

again filed a petition under Section 13 of the Act on 13.12.2018, seeking divorce.

It is to be noted that during pendency of the first divorce petition, maintenance *pendente lite* was assessed at the rate of Rs.5000/- per month vide order dated 23.03.2017 (Annexure P-2). Respondent-petitioner filed an execution application on 04.01.2019, for payment of Rs.47,750/- i.e., arrears of maintenance *pendent lite*, which were assessed vide order dated 23.03.2017. The petitioner filed objections (Annexure P-4) thereto, which have however been dismissed by the learned Family Court, Gurdaspur, vide impugned order dated 09.11.2020 and the petitioner has been directed to made good the payment of Rs. 47,750/-. Warrant of attachment of salary has been conveyed to the concerned department, where the petitioner is working and conditional warrants have been issued.

Aggrieved therefrom, the present petition has been filed.

Learned counsel for the petitioner vehemently argues that once the respondent-wife had agreed to cohabit with the petitioner and petition under Section 13 of the Act filed by the present petitioner stood withdrawn on 09.12.2017, there is no question of now filing an execution application for payment of the arrears, if any. It is submitted that the execution application could have been filed only during the pendency of the petition and once the petition itself stood withdrawn, there is no question of entertaining the execution application for release of the maintenance *pendente lite*. He relies upon the decision of the Andhra Pradesh High Court in **Arvind Chenji Vs. Krishnaveni, CRP No. 2237 of 2009, decided on 10.08.2009**. It is submitted that the petitioner has been directed to pay maintenance *pendente lite* in the subsequent petition filed by him and he is depositing the amount in terms of order dated 19.09.2019 in CR No. 5903 of 2019 pending before this Court. It is further argued that once the respondent had agreed to cohabit with the petitioner, she is estopped from filing the execution application. It is thus prayed that the present petition be

allowed.

I have heard learned counsel for the petitioner and have gone through the file with his assistance. However, I do not find any merit in the arguments so raised.

It is not denied that a divorce petition under Section 13 of the Act, seeking divorce was filed by the petitioner on 19.10.2016. Maintenance *pendente lite* was assessed by the learned Family Court on 23.03.2017 to be paid from the date of the application. The respondent, doubtlessly, had agreed to accompany the petitioner and cohabit with him unconditionally. However, there is not a whisper emanating from any document, that she had agreed to waive the maintenance so fixed. It is further a matter of record that the respondent-wife has claimed arrears of maintenance up-till 09.12.2017 only i.e., the date on which the petition was dismissed as withdrawn. In the decision relied upon by learned counsel for the petitioner, maintenance under Section 24 of the Act, had been sought beyond the date of disposal of main proceedings. Therefore, the same is not relevant in the facts and circumstances of the case.

The argument, that the respondent is estopped from seeking arrears of maintenance due to the divorce petition being withdrawn on the basis of a settlement, is devoid of any merit. There is admittedly nothing to indicate waiver of maintenance assessed. Furthermore, it is a matter of record that the respondent has not sought the maintenance so assessed beyond the period i.e., 09.12.2017. The above argument is thus noticed only to be rejected. In respect to maintenance assessed in the subsequent petition, the same admittedly does not pertain to the period in question in the present proceedings.

Learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity in the impugned order dated 09.11.2020, passed by the learned Principal Judge, Family Court, Gurdaspur, which calls for

interference by this Court in exercise of revisional jurisdiction.

No other argument has been raised.

Petition is accordingly dismissed.

It is clarified that none of the observations made hereinabove shall be construed to be a reflection on the merits of the case. The same are solely confined for the purpose of decision of the present petition.

November 17, 2020.

's.khan'

(LISA GILL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No