

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

CR-833-2021

Date of Decision:06.04.2021

Preeti Thakur

...Petitioner

Versus

Vikas Sharma

....Respondent

CORAM: HON'BLE MR JUSTICE ARUN MONGA

Present: - Mr.Yadvinder Singh Turka, Advocate,
for the petitioner.

ARUN MONGA, J. (ORAL)

Instant petition, *inter alia*, is for setting aside an order dated 02.08.2018 vide which petitioner-wife has been proceeded *ex parte* by the Family Court in the matrimonial proceedings pending between her and her husband, arising out of divorce petition filed by the respondent-husband under Section 13(3) of the Hindu Marriage Act, 1955. Application filed by the petitioner-wife for recalling the order dated 02.08.2018 has also been dismissed by the Family Court vide its subsequent order dated 15.2.2020.

2. At the threshold, on query of the Court, learned counsel for the petitioner submits that the petitioner is a very poor and destitute lady with no financial means to litigate. On the fateful day, when she was proceeded *ex parte*, she was though sitting outside the Court premises, but due to absence of her counsel she did not get to know that while she continued sitting outside the Court, at the same time, she was being proceeded *ex parte*.

3. Learned counsel states that the petitioner did not come to know about the *ex parte* proceedings until the inspection of the Court filed was carried out at a later stage and an application dated 02.01.2019 was filed forthwith seeking to set aside the *ex parte* proceedings.

4. Learned counsel contends that effectively the delay in seeking the recalling of the proceedings was caused between 02.08.2018 and 02.01.2019 which has been duly explained in the application itself. Notwithstanding, her request to join the proceedings and cross-examine the witnesses was not accepted vide impugned order dated 15.02.2020 passed by the Family Court.

5. Divorce proceedings reveals that marriage was solemnized between the parties on 26.10.2012 and from the wedlock the daughter was also born on 26.7.2013. Her custody is with the petitioner-wife. Certain other collateral proceedings are also going on arising out of the matrimonial discord between the parties. Due to non-appearance of the petitioner, on a particular date, it would be quite unjustified to not allow her to participate in the subsequent proceedings, which are likely to result in an adverse outcome in the absence of the defence of the petitioner-wife.

6. Since no prejudice would be caused to the respondent/husband and keeping in view the nature of order being passed, this Court does not deem it appropriate to issue notice to the husband as no prejudice would be caused to him.

7. Having heard learned counsel for the petitioner, I am of the view that the reasons stated in the application to seek recalling of the *ex parte* proceedings appear to be genuine. In any case, if the petitioner is not allowed to participate in the proceedings and given any right to cross-examine her witnesses produced by the respondent-husband, the same would result in miscarriage of justice and severe prejudice would be caused to the petitioner-wife to defend herself in the divorce proceedings.

8. Taking stock of the overall situation, the impugned order dated 15.2.2020 is set aside and the petitioner is granted one opportunity to cross-examine the witnesses on the next date of hearing.

9. It is made clear that no adjournment shall be granted at the instance of the petitioner. However, the Family Court is at liberty to proceed with the case as per its convenience.

10. Disposed of.

(ARUN MONGA)
JUDGE

06.04.2021

Vivek

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No