

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.M. No. 9708-CII-2021 in/and
FAO No. 4633-2016
Date of decision 30.09.2021

Mandeep

...Appellant

Vs.

Meena

...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. Kamal Deep Sehra, Advocate,
for the applicant/appellant.

Mr. Mahesh Kumar Sangwan, Advocate
for the non-applicant/respondent

Ritu Bahri, J. (Oral)

C.M. No. 9708-CII-2021

Application is allowed as prayed for

Accordingly, Annexure P-1 is taken on record.

FAO No. 4633-2016

The present appeal has been filed by the appellant-husband under Order 43 Rule 1 CPC and under Section 19 of the Family Court Act, seeking setting aside order dated 16.02.2016 passed by learned Family Court, Bhiwani whereby application filed by the appellant-husband for restoration of petition, which was dismissed for want of payment of costs and non-prosecution, vide order dated 17.10.2014, has been dismissed.

A bare perusal of order dated 17.10.2014 shows that on 17.10.2014, the main counsel i.e Mr. Vedpriya could not appear in person before the Court as he had gone to Chandigarh for filing an appeal against

order dated 10.09.2014 and Mr. Sanjeev Gupta, Advocate appeared as his proxy counsel and submitted an application for adjournment of the case but the petition was dismissed for want of payment of costs and non-prosecution.

A plea was raised before the Court below that the appellant-husband is serving in Indian Army and posted at Assam Rifles at Bimahasao (Hosolong) a tribble remote area and it was not possible for him to appear in person on each and every date of hearing in the Court, hence the non-appearance of the appellant-husband or his original counsel was neither intentional nor wilful but due to unavoidable circumstances.

Heard learned counsel for the parties at length.

The application of the appellant-husband was dismissed by observing that he had filed an application for taking the sample of the voice of the respondent, which was dismissed by the Court below, vide order dated 10.09.2014 and a cost of Rs.3000/- was imposed upon him. He did not make the payment of costs and sought several adjournments, which was granted by the Predecessor of the Court below, in the interest of justice. He also pleaded that he preferred an appeal against the said order dated 10.09.2014 but he did not place on record any such order of Hon'ble High Court to show that he had filed an appeal or revision. Keeping in view the fact that he took repeated adjournments and was trying to delay the proceedings, his application was dismissed for non payment of costs and non-prosecution.

On 23.09.2021, this Court passed the following order:-

“It is contended that appellant-husband in the instant appeal is working in Army as a Constable and respondent-wife is working as a Constable in Haryana Police, and presently posted at Charkhi Dadri. It is further contended that out of this wedlock one girl child is born, who is aged 11 years old and staying with the mother,

respondent herein. Learned counsel for the appellant states that the parties are living separately since 2012.

An attempt can be made for an amicable settlement to secure future of the girl child.

Hence, the matter is adjourned to 30.09.2021.

On the next date, respondent will appear before the Court through virtual mode.

Today, respondent appeared virtually before this Court and after hearing her, it seems that the matter could not be settled between the parties. She is not ready to give divorce to the appellant-husband.

The impugned order is liable to be set aside as merely non-appearance of appellant and his counsel and non-payment of costs by the appellant, cannot be made a ground to dismiss the impugned application, seeking restoration of petition.

Learned counsel for the appellant has further stated that the appeal (Criminal Appeal bearing No. 28-2014/2016) filed by the respondent-wife against the judgment of acquittal dated 30.08.2014, has also been dismissed on 06.08.2016

It is not in dispute that the appellant-husband is serving in the Indian Army in Assam Rifles and was posted in remote area. It is not possible for him to come on each and every date of hearing and this was one of the reason for repeated adjournments.

The restoration of suit dismissed in default should not be denied strictly simply because the plaintiff fails to prove if the application is made within limitation, the suit ought to be restored and for the negligence on the part of the party, the other can be compensated with costs.

In view of the above factual position, the appeal is allowed and

order dated 16.02.2016 is set aside. The parties are directed to appear before the Family Court on 25.10.2021 and thereafter, the Family Court shall proceed in accordance with law, expeditiously.

(RITU BAHRI)
JUDGE

30.09.2021
G Arora

(ARCHANA PURI)
JUDGE