

124 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-51148-2021

Date of Decision: 07.12.2021

MOHD. NISAR @ NISAR AHMED ... PETITIONER
VS.

NISHA RUKSAR .. RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present : Mr. Anil Kumar Garg, Advocate
for the petitioner.

VIVEK PURI, J.(ORAL)

The matter has been taken up through video-conferencing due to COVID-19 pandemic.

The petitioner is aggrieved by the order dated 05.10.2021 (Annexure P-3) passed by learned Principal Judge, Camp Court-cum-Family Court, Malterkota, vide which the defence of the petitioner has been struck off on account of non-submission of reply.

As per the observations recorded in the impugned order, the petitioner had put appearance in the Court below on 25.09.2019 and till the date of passing of the impugned order the reply was not filed. It was observed that the stipulated period to file the written reply has elapsed and sufficient opportunities were given in the interest of justice and situation arising due to Covid-19 Pandemic.

Learned counsel for the petitioner contends that reply has already been prepared, copy whereof has been annexed with the petition and at the earlier instance the same could not be filed because of communication gap with the petitioner. The copies of the interim orders placed on record indicate that on most of the occasions the matter was adjourned either on the ground of Presiding Officer being on maternity leave/child care leave and

also due to Covid-19 Pandemic. No doubt on 19.10.2019, 21.12.2020 and 03.03.2021, the case was taken up but the reply was not filed.

It has been stated that after striking off the defence, the evidence of the applicant is yet to be recorded and the matter is now fixed for 21.12.2021. The proceedings pertain to the claim of the respondent for maintenance under Section 125 Cr.P.C.. It shall be appropriate if an opportunity is afforded to the petitioner to place on record the reply and the controversy is adjudicated on merits after affording an opportunity to defend to the petitioner. For the lapse on the part of the petitioner, the opposite side can be conveniently compensated in terms of costs.

The present petition is being disposed of without issuance of notice to the respondent to curb further unnecessary delay in the matter.

In these circumstances, the present petition is allowed. Order dated 05.10.2021 passed by the learned Principal Judge, Camp Court-cum-Family Court, Malterkota, vide which the defence of the petitioner has been struck off, is set aside, subject to payment of Rs.10,000/- as costs to the respondent-daughter of the petitioner. It is, however, made clear that the costs shall be paid and reply shall be filed on 21.12.2021 i.e. the date fixed in the Court below. In the event for any reason the Presiding Officer is not holding Court on the date fixed, the necessary exercise of payment of cost and submission of the reply shall be carried out on the next effective working day of the trial Court.

07.12.2021
smriti

(VIVEK PURI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No