

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

FAO-2713-2019 (O&M)
Date of decision:- 23.11.2022

Rajan Jha

....Appellant

vs.

Soni Kumari and anr.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. A.S. Khinda, Legal Aid Counsel
for the appellant.

Respondent No. 1-Soni Kumari in person with
Mr. N.S. Sodhi, Advocate

Ritu Bahri, J. (Oral)

The present appeal has been filed by the appellant seeking setting aside of judgment and decree dated 25.01.2019 passed by the Principal Judge, Family Court, Jalandhar vide which the petition filed by the appellant under Sections 13 (1)(i) and (ia) of the Hindu Marriage Act was dismissed.

The marriage of the parties was solemnized on 02.06.2010 at Bihar as per Hindu rites and ceremonies. One child was born out of this wedlock. The parties lived and cohabited together as husband and wife till December 2013.

On 02.05.2019, this Court issued notice to the respondent and the appellant was directed to bring a draft of Rs.25,000/- towards litigation expensed to be paid to the respondent-wife. On 21.08.2019, this Court

referred the matter to Mediation and Conciliation Centre of this Court and it was ordered that amount of Rs.25,000/- already awarded as litigation expenses be remitted to respondent No. 1 before the said Forum itself. On 17.01.2019, respondent No. 1 has informed the Court that the appellant has not paid arrears of maintenance till date, which was granted @ Rs.4000 per month. On 25.08.2022, a report dated 04.11.2019 of Mediator was received stating therein that the mediation could not take place between the parties, as the appellant did not join the mediation proceedings.

Today, learned counsel for the appellant submits that he has made all the attempts to get in touch with the appellant but he is not able to contact him.

Keeping in view the fact that the appellant has not paid arrears of maintenance to respondent No. 1-wife, reference can now be made to the judgments passed by this Court where the husband refuses to pay the maintenance to the wife and the child. This Court in ***Kiran Bala Bangar vs Vijay Kumar Bangar. FAO M 60 2008***, was examining a case where under Section 24 of the HMA, the husband had not paid maintenance and had disobeyed the orders of the Court. Even he had not paid arrears for the last one year. The wife had been taking steps for recovery of payment of arrears of maintenance. The wife had come up against the judgment of the Family Court where the husband had been granted divorce under Section 13 of the HMA, keeping in view that he was in arrears of maintenance, the appeal filed by the wife was allowed and decree of divorce was set aside. The operative part of the judgment reads as under:-

15. Admittedly, the respondent has not paid the

maintenance pendente lite as ordered by this court on 3.7.2009. A period of more than one year has elapsed but till date he has not paid even a single penny to the wife. Earlier also the payment was made by the husband after the wife filed application seeking payment of arrears of maintenance. Now again the wife has filed application for payment of arrears of maintenance, but he has not paid the maintenance. The person who is disobeying the order of the court, cannot be allowed to be heard on merits. Since, the respondent has not complied with the order passed by this court on 3.7.2009, his defence is struck off 16. The guidance as to how to proceed further in such circumstances is available from the judgments referred to above. It has been consistently opined that after the striking off defence of the husband on account of non-payment of maintenance, the wife's allegations in the petition are to be taken as correct or the husband cannot be permitted to be heard on merits.

In ***Sonia vs. Deepak Kumar. FAO M-188 of 2015***, where this Court examined the case where petition under Sections 11 and 12 of HMA, 1955, for annulment of marriage had been allowed. Before the Family Court the defence of husband struck off as he had not paid maintenance pendente lite and litigation expenses. The appeal filed by the appellant wife was allowed on the ground that in the absence of any defence available, the marriage could not be annulled.

In the facts of the present case, applying the ratio of above mentioned judgment to the facts of the present case, the present appeal is liable to be dismissed as in this case as well, the appellant/husband is not coming forward to clear the arrears of maintenance.

The wife in the present case is not even seeking maintenance and she is bringing up the child alone, hence, the appeal is dismissed.

(RITU BAHRI)
JUDGE

23.11.2022

Pooja Saini/G Arora

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No