

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

CRM-M-34019-2021

Date of Decision: 3.8.2022

Devender Yadav

..... Petitioner

Versus

Geeta Yadav and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Ms. Jai Veer Kaur, Advocate, for the petitioner.

Rajesh Bhardwaj, J. (ORAL)

The petitioner has approached this Court praying for setting aside the order dated 27.7.2017 passed by the learned JMIC, Gurugram whereby the defence of the petitioner was struck off and further praying for setting aside the order dated 5.4.2018 passed by the learned JMIC, Gurugram, whereby, the application for setting aside the ex-parte order dated 27.7.2017 was dismissed.

Learned counsel for the petitioner has submitted that both the Courts below have fallen in error in declining the prayer made by the petitioner, wherein the defence of the petitioner was struck off. She submits that there was a communication gap between the petitioner and his counsel and thus, he was not aware of the order passed by the Court, which resulted in striking off his defence and thus, grave injustice has been caused to the petitioner. She submits that as the case was adjourned to 15.2.2017, 9.3.2017, 6.4.2017, 6.5.2017, 21.7.2017 and 27.7.2017 for filing reply, but the petitioner failed to file the reply on 27.7.2017 and defence of the petitioner was struck off. She submits that thereafter, the petitioner filed an application for setting aside the order dated 27.7.2017, however, the learned

JMIC after hearing the parties, declined the same vide order dated 5.4.2018. The precise submission of learned counsel for the petitioner is that due to communication gap, the petitioner was unable to file the reply and thus, the impugned orders be set aside.

Heard.

After hearing learned counsel for the petitioner and perusing the record, it is apparent that the petitioner had been given ample opportunities by the Court for filing reply. Not only this, cost was also imposed by the Court on the petitioner with a direction that if he failed to file the reply, no further opportunity would be given and the defence of the petitioner be struck off. Despite that the petitioner did not respond and thus, the Court had no other option than to struck off his defence. Thereafter, he filed an application for setting aside the ex-parte order dated 27.7.2017. It was noted that he was given six effective opportunities by the Court. The petitioner took the stand that he was the Member of Haryana Staff Selection Commission and was occupied with urgent official work. Resultantly, the application for setting aside the order dated 27.7.2017 was dismissed by the same Court vide order dated 5.4.2018.

The Court is not oblivious of the fact that the petitioner herein is the respondent-husband in the petition filed by the wife under Section 12 of the Protection of Women from Domestic Violence Act, 2005, wherein she prayed for the necessary maintenance for her survival. From the conduct of the petitioner, it is apparent that he delayed the same only in order to prolong the trial and thus, restraining the wife from claiming maintenance and other reliefs through a process of law. The application for setting aside the ex-parte order was declined by the learned JMIC vide order dated

5.4.2018. The petitioner approached this Court impugning that order after about four years by way of the present petition. The conduct of the petitioner is self speaking that not only he is sleeping over his rights, but intentionally restraining the wife from pursuing her legal rights. From the facts and circumstances of the case, this Court is convinced that the petitioner does not deserve any leniency, hence, the petition being devoid of any merit is hereby dismissed.

3.8.2022
sharmila

(RAJESH BHARDWAJ)
JUDGE

Whether Speaking/Reasoned :	Yes/No
Whether Reportable :	Yes/No