

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

294

CR-4018-2019

Date of decision: 06.07.2022

Rozy

.....Petitioner

Versus

Jitesh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate
for the petitioner.

Mr. Keshav Pratap Singh, Advocate
for the respondent.

MANJARI NEHRU KAUL, J. (ORAL)

The instant revision petition has been preferred under Article 227 of the Constitution of India for setting aside of the orders dated 23.05.2019 and 28.05.2019 (Annexures P-7 and P-8) passed by the learned Family Court at Karnal in a petition filed under Section 13 of the Hindu Marriage Act, 1955 vide which the defence of the petitioner was struck off.

Power of attorney which has been filed on behalf of the respondent in Court today is taken on record subject to all just exceptions.

Learned counsel for the petitioner submits that the issues were framed by the Family Court on 23.05.2019 and on the very same day affidavit of PW Jitesh (respondent) was tendered in his examination-in-chief. Since the petitioner had been supplied a copy of the respondent's affidavit only on the above date, an adjournment was sought by her counsel for cross-examination of the respondent which

was allowed subject to payment of Rs.1,000/- as costs. The respondent was also directed by the Family Court to hand over the copies of the affidavits of his witnesses whom he wanted to be examined in support of his case, at least two to three days in advance so as to enable the counsel for the petitioner to conduct their cross-examination on the date fixed. On the next date of hearing i.e. 28.05.2019, the respondent tendered the affidavit of PW Yoginder Sharma, in his examination-in-chief. Since the petitioner was not supplied with an advance copy of the affidavit tendered, her counsel was unable to conduct cross-examination. Learned counsel submits that shockingly the Family Court went ahead and passed the impugned order vide which the defence of the petitioner was struck off. He submits that it is evident that the Family Court without granting sufficient opportunity to the petitioner had wrongly struck off her defence.

Per contra, learned counsel for the respondent while controverting the submissions made by the counsel opposite submits that sufficient opportunity was granted to the petitioner to cross-examine the respondent's witnesses, however, the petitioner intentionally was indulging in dilatory tactics by seeking repeated adjournments.

I have heard learned counsel for the parties and perused the relevant material on record.

A perusal of the impugned order dated 28.05.2019 reveals that the petitioner was not supplied the copies of the affidavits of the respondent and his witness in advance even though a specific direction to the said effect had been made by the Family Court on 23.05.2019.

Therefore, a request for adjournment was made by the learned counsel for the petitioner to peruse the affidavits tendered by the respondent and his witness and thereafter cross-examine them.

In the circumstances, it cannot be said by any stretch of imagination that the petitioner had indulged in any dilatory tactics. The impugned order deserves to be set aside as on the face of it, it has been passed in a tearing hurry.

Before concluding, it would be pertinent to observe here that while issuing notice of motion, this Court vide order dated 03.07.2019 directed the petitioner to deposit Rs.1,000/- as ordered by the Family Court vide order dated 23.05.2019. Along with this, the petitioner was also directed to pay Rs.5,000/- as additional costs to the respondent. As per office report, the petitioner has complied with the aforementioned directions of this Court. This Court, therefore, does not deem it appropriate to impose any further costs on the petitioner.

Accordingly, the instant petition is allowed. The impugned order dated 28.05.2019, vide which the defence of the petitioner was struck off, is set aside.

06.07.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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