

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

CR-3028-2022 (O&M)
Decided on : 02.08.2022

Mandeep Singh

..... Petitioner

Versus

Harinder Kaur

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Ms. Harveen Kaur, Advocate
 for the petitioner.

Manjari Nehru Kaul, J.(Oral)

Instant petition has been filed under Article 227 of Constitution of India for issuance for setting aside the order dated 25.05.2022 (Annexure P-1) passed by Addl. Principle Judge, Family Court, Ludhiana whereby application for recalling the order dated 20.11.2019 vide which defence of the petitioner was struck off for non-filing of written statement was dismissed.

Learned counsel for the petitioner inter alia contends that the impugned order has been passed by the Court below without appreciating and considering the relevant facts in the right perspective. She submits that the defence of the petitioner was wrongly struck off by the Court below without appreciating that the petitioner had been suffering from mental illness, which was evident from the medical prescriptions, which have been annexed as Annexure P-5 with the instant petition. Hence, the petitioner for reasons beyond his control was unable to file his written statement within

the stipulated time. She further submits that the petitioner had also filed a petition under Section 9 of Hindu Marriage Act, which is still pending adjudication. Hence, one last opportunity be granted for filing written statement, failing which, he would suffer irreparable loss.

Heard learned counsel and perused the impugned order passed by the Court below.

It would be relevant to point out that the petitioner was proceeded against ex parte vide order dated 06.04.2019 after he failed to put in appearance despite due service of summons. The petitioner moved an application for setting aside the ex parte order dated 06.04.2019, which was allowed after a no objection was given by the respondent. Thereafter, the case was adjourned to 08.08.2019 for filing the written statement subject to payment of cost of Rs.1,000/-. However, on the date fixed i.e. 08.08.2019, neither did the petitioner pay the cost nor did he file any written statement, as a result, the case was again adjourned to 11.09.2019 and yet again for 16.10.2019. Despite being given a last opportunity to pay the cost, which had been imposed vide order dated 08.08.2019 and to file his written statement, the petitioner failed to do so. The Court below still took a lenient view and adjourned the case to 20.11.2019 and again gave another opportunity to the petitioner to file his written statement and also pay an additional cost of Rs.500/- alongwith Rs.1,000/- the cost, which had been imposed earlier, yet again the petitioner failed to file his written statement or even pay the cost, which had been imposed. No doubt, learned counsel has vehemently submitted that the petitioner was keeping indifferent health, which was one of the reasons that he could not comply with the orders of

the Court below, however, no such ground of his illness was taken while seeking adjournments before the Court below.

Learned counsel has drawn the attention of this Court to Annexure P-5, which is some medical prescription of the petitioner. She has urged that it clearly stands reflected therein that the petitioner had been on medication. This Court does not find any substance in the submissions made as the medical prescription pertains to the second half of the year 2020 and the order vide which his defence was struck off as well as the earlier orders of the Court wherein the petitioner was granted repeated opportunities to deposit the cost as well as file written statement are much prior in time i.e. November, 2019 and earlier. A question mark is also raised qua the authenticity of Annexure P-5 because it only shows some medicines, which have been prescribed by the doctor, however, neither the prognosis or the diagnosis of the petitioner strangely is mentioned therein.

In the wake of the conduct of the petitioner coupled with no authentic medical record or medical report of the petitioner having been brought before the Court below or even this Court, the present petition being devoid of any merit, is dismissed.

(MANJARI NEHRU KAUL)
JUDGE

02.08.2022

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Whether speaking/reasoned:

Yes/No

Whether reportable :

Yes/No