

110

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

**CM-10371-CII-2022 &
CIVIL REVISION No.918 of 2022 (O&M)
DATE OF DECISION : 30.08.2022**

Krishan Lal

.....Petitioner

versus

Kari

.....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Jangjit Singh Dahiya, Advocate for the petitioner
..

ALKA SARIN, J. (Oral):

CM-10371-CII-2022

This is an application for restoration of the main case which
was dismissed for non-prosecution on 02.08.2022.

For the reasons stated in the application, the same is allowed
and the civil revision is restored to its original number.

With the consent of the learned counsel, the main case is taken
up on Board for hearing today itself.

CIVIL REVISION No.918 of 2022

The present revision petition has been filed under Article 227 of the Constitution of India read with Section 151 Code of Civil Procedure, 1908 challenging the order dated 13.12.2016 passed by the Additional District Judge, Yamuna Nagar at Jagadhri whereby the petition filed by the petitioner under Section 13 of the Hindu Marriage Act, 1955 was dismissed for non-prosecution as also challenging the order dated 12.10.2021 passed by the Family Court, Yamuna Nagar at Jagadhri whereby the application for restoration was also dismissed.

Learned counsel for the petitioner would contend that the parties to the *lis* had entered into a compromise and since the respondent had to withdraw all the cases filed by her, hence, under the said impression, the petitioner had not appeared before the Court. The learned counsel would further contend that the non-appearance of the petitioner was not intentional or deliberate.

Heard.

The brief facts relevant to the present *lis* are that in the present case the petitioner initially filed a divorce petition under Section 13 of the Hindu Marriage Act, 1955 being HMA-22-2005. In the said petition the respondent filed an application under Sections 24 and 26 of the Hindu Marriage Act, 1955. However, the said divorce petition was dismissed in default on 22.02.2005. Thereafter, an application for restoration was filed which was allowed on 13.10.2008 and the petition was restored. On 08.11.2008 the petitioner herein withdrew the divorce petition for filing a

fresh petition on the ground that there were certain technical defects in the petition. The petitioner then filed a fresh petition under Section 13 of the Hindu Marriage Act, 1955 in 2011 being HMA-109-2011. In the said petition, yet again, an application under Section 24 of the Hindu Marriage Act, 1955 was filed and vide order dated 17.12.2009 interim maintenance was awarded to the respondent. However, the petitioner failed to make payment of the interim maintenance and on 20.12.2011 the divorce petition was dismissed on the ground of non-payment of interim maintenance. Thereafter, the present petition was filed which was dismissed for want of prosecution on 13.12.2016 by passing the following order :

“Case called several time. But none has appeared on behalf of the petitioner. It is already 2:50 p.m. No further wait is justified. Perusal of the file indicates that petitioner has already availed several opportunities for petitioner evidence, but failed to lead any evidence. On the last date of hearing, costs of Rs.1,000/- was imposed. Neither costs deposited nor anyone appeared on behalf of petitioner. It seems that petitioner is not interested to pursue present petition. Hence, present petition is dismissed for want of prosecution as well as dismissed in default. File be consigned to record room.”

Subsequently, after a lapse of almost 14 months an application was filed for restoration of the divorce petition. In the application it was stated that on 26.09.2016 all the matrimonial litigation had been

compromised and hence the petitioner did not pursue the divorce petition which had been dismissed in default of appearance. It was further stated in the application that the petitioner received summons in the suit for mandatory injunction filed by the respondent-wife and hence it was revealed that the compromise was not complied with hence the application for restoration was filed. The said application was contested by the respondent and vide the impugned order dated 12.10.2021 the application for restoration was dismissed.

There is no reason forthcoming in the application or the present petition for the absence of the counsel/petitioner on 13.12.2016. Rather, it was stated in the application that since there had been some oral compromise, therefore, the petitioner did not pursue the petition and hence the same was dismissed for non-prosecution. The application is totally bereft of any details as to how and when the petitioner came to know that the divorce petition was dismissed in default. In fact, from a perusal of the averments made in the application it appears that the petitioner was all along aware of the petition having been dismissed in default and still came to the Court for restoration of the same only on receiving the summons in the suit for mandatory injunction. The conduct of the petitioner in the present case also needs to be noticed in as much as repeatedly the case had been dismissed in default even on previous occasions. Even the present petition filed in this Court was dismissed for non-prosecution on 02.08.2022. It appears that the only endeavour of the petitioner is to harass the respondent by abusing the process of law.

In view of the above, I do not find any illegality or infirmity in the orders passed by the Courts below.

Dismissed. Pending applications, if any, also stand disposed off.

30.08.2022
parkash

(ALKA SARIN)
JUDGE

<u>NOTE:</u> Whether speaking/non-speaking: Speaking Whether reportable: YES/NO
--