

FAO-3236 of 2017

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

(Proceedings through V.C.)

FAO-3236 of 2017

Date of Decision: 11.03.2022

Udaivir

...Appellant

Versus

Suman

....Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present:- Mr. Vivek Salathia, Advocate, for the appellant.
Mr. A.S. Likhari, Advocate, for the respondent.

ASHOK KUMAR VERMA, J.

[1] Through this appeal, the appellant-husband has laid challenge to the order dated 28.04.2016 passed by the District Judge, Family Court, Gurgaon, whereby his petition filed under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'HMA') was dismissed on account of non-payment of maintenance to the respondent and the order dated 15.11.2016 of the District Judge, Family Court, Gurgaon, vide which his application for restoration of the petition under Section 13 of the HMA has been dismissed.

[2] Brief facts of the present case are that marriage of the appellant and the respondent was solemnised according to the Hindu rites and ceremonies on 16.02.2010. Out of their wedlock no child was born. Due to temperamental difference, both the parties started living separately since 01.04.2013. Thereafter, appellant-husband filed petition under

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Section 13 of the HMA for dissolution of marriage by a decree of divorce on 01.11.2014 wherein respondent-wife appeared and contested the petition by filing her written statement. During the pendency of the aforesaid proceedings, respondent-wife filed an application under Section 24 of the HMA for maintenance *pendente lite* and litigation expenses. The Family Court vide order dated 22.04.2015 granted maintenance to the respondent-wife @ ₹25,000/- per month from the date of the filing the application i.e. 21.03.2015. Aggrieved against the order of the Family Court dated 22.04.2015, appellant filed Civil Revision No.3869 of 2015 before this Court. As the appellant failed to clear the arrears of maintenance, Family Court vide impugned order dated 28.04.2016 dismissed the petition of the appellant filed under Section 13 of the HMA. Hence, appellant's Civil Revision was also dismissed as infructuous. Thereafter, appellant filed application (Annexure P-5) for restoration of his petition. During the pendency of the said application, Family Court directed the appellant to make payment of arrears of maintenance to the respondent-wife. The appellant by way of cheque dated 24.10.2016 paid ₹2,00,000/- to the respondent-wife. However, on account of delay, application of the appellant for restoration of the petition under Section 13 of the HMA was dismissed by the Family Court vide impugned order dated 15.11.2016. Subsequently, appellant challenged the order dated 28.04.2016 and order dated 15.11.2016 before this Court by way of Civil Revision No.689 of 2017, which was dismissed as withdrawn on 07.03.2017 to file the present appeal.

[3]

Learned counsel for the appellant contended that impugned

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orders passed by the Family Court are illegal and not sustainable in the eyes of law. The appellant could not pay the arrears of maintenance due to financial hardship. The Family Court failed to appreciate the fact that the appellant-husband had already preferred Civil Revision before this Court challenging the grant of maintenance to the respondent-wife. Hence, the impugned order passed by the Family Court dismissing his petition, has virtually deprived of the appellant his right to challenge the orders of maintenance especially when the respondent-wife was an earning lady having reasonable resources. The Family Court has dismissed the application of the appellant for restoration of his petition by adopting hyper-technical approach despite the fact that the appellant had paid the maintenance amount to the respondent-wife. In support of his contentions, learned counsel for the appellant has placed reliance on the judgments of the Patna High Court in ***Bajrang Rai and others v. Ismail Mian and others***, 1978 AIR (Patna) 339 and ***Tarlochan Singh and others v. Union Bank of India and other***, 2012(57) R.C.R.(Civil) 107.

[4] Per contra, learned counsel for the respondent contended that the application filed by the appellant was barred by limitation. Therefore, present appeal is liable to be dismissed.

[5] We have heard the learned counsel for the parties and perused the paperbook.

[6] From the perusal of the record it is evident that the appellant had filed petition for dissolution of marriage by way of decree of divorce under Section 13 of the HMA. Respondent-wife put in appearance and filed her written statement. She also preferred application under Section

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24 of the HMA seeking maintenance *pendente lite* and litigation expenses, which was allowed on 22.04.2015 awarding her maintenance @ ₹25,000/- per month from the date of filing of the application besides litigation expenses to the tune of ₹2200/-. However, due to financial hardship, appellant could not clear the arrears of maintenance in time. Lateron, the appellant paid ₹2,00,000/- to the respondent-wife by way of cheque dated 24.10.2016 and her statement accepting the said cheque had also been recorded separately. The Family Court dismissed the application of the appellant for restoration of his petition under Section 13 of the HMA only on the ground that there had been unjustified delay of almost two months on the part of the appellant, which was deliberate and intentional. It is further seen that appellant filed Civil Revision No.689 of 2017 challenging the impugned orders, which was dismissed as withdrawn with liberty to avail alternate remedy, if available vide order dated 07.03.2017 (Annexure P-10).

[7] From the sequence of events mentioned above, it is axiomatic that the appellant could not pay the maintenance due to financial hardship. However, he had paid the entire arrears of maintenance amounting to ₹2,00,000/- through cheque dated 24.10.2016, which was duly received by the respondent-wife. After paying the arrears of maintenance he immediately moved application for restoration of his petition under Section 13 of the HMA, which was dismissed by the Family Court solely on the ground of delay by adopting hyper-technical approach by ignoring the fact that the appellant had already cleared the arrears of maintenance.

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[8] For the reasons mentioned above, present appeal is allowed. Impugned orders of the Family Court dated 28.04.2016 and 15.11.2016 are set aside and the petition filed by the appellant under Section 13 of the HMA is restored to its original number.

(Ritu Bahri)
Judge

(Ashok Kumar Verma)
Judge

March 11, 2022
R.S.

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No