

CRR(F)-1014-2022

Date of decision: 27.10.2022

HIMANSHU

...PETITIONER

VERSUS

MANISHA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Ram Pal Verma, Advocate for
Mr. Susheel Gautam, Advocate
for the petitioner.

VIVEK PURI, J. (ORAL)

Petitioner has assailed the order dated 16.09.2022 passed by the Court of learned Principal Judge (Family Court), Karnal vide which his defence has been struck off.

Learned counsel for the petitioner contends that the respondent has instituted a petition under Section 125 Cr.P.C for enforcement of her claim for maintenance against the petitioner. At the earlier instance, the petitioner was proceeded against *ex parte* vide order dated 07.01.2022. The *ex parte* proceedings against the petitioner were set aside vide order dated 27.05.2022, subject to payment of Rs.1500/- as costs. Accordingly, the case was adjourned to 16.09.2022 for payment of costs, filing of written statement and reply to the application for interim maintenance. It was also specifically directed that only one effective opportunity shall be granted in this regard. It has been further contended that the petitioner had engaged the counsel from Panipat who could not appear in time in the Court on 16.09.2022. Although, the respondent along with proxy counsel had put appearance in the Court during the second half of the day but on account of non-appearance of the regular counsel, the needful could

submitted that the reply to the main petition as well as application for interim maintenance and the affidavit of disclosure of assets and liabilities have been prepared and one opportunity may be granted to submit the same in the trial Court. The next date of hearing in the Court below is stated to be 09.11.2022 for evidence of the respondent-wife.

The controversy before the learned Family Court is with regard to the matrimonial dispute. The respondent is seeking to enforce her claim for maintenance. Although, the petitioner was proceeded against *ex parte* at the earlier instance but the *ex parte* proceedings were set aside by observing that the matrimonial dispute should be decided on merits rather than passing an adverse order against either party on mere technicalities. Accordingly, one opportunity was granted to the petitioner to submit the reply and subject to the payment of Rs.1500/- as costs.

On the date fixed i.e. 16.09.2022, neither the costs were tendered nor replies and the affidavit of disclosure of assets and liabilities were submitted. The reason assigned for non-submission is to the effect that the counsel for the petitioner was to come from Panipat and he could not put appearance in the learned Family Court at Karnal being an out station counsel. However, only one opportunity has been sought to do the needful.

Keeping in view the fact that it is a matrimonial dispute and only one opportunity was granted to the petitioner to tender the costs and submit the reply, it is deemed appropriate that one effective opportunity be granted to the petitioner to do the needful, so that controversy is adjudicated on merits after contest. For the lapse on the part of the petitioner and to compensate the respondent, the petitioner can be burdened with costs.

Accordingly, the petition is allowed, the impugned order dated

main petition, application for interim maintenance and affidavit of disclosure of assets and liabilities in the learned Family Court at Karnal on 09.11.2022, subject to the condition that the petitioner shall pay a sum of Rs.10,000/- as costs to the respondent. The amount of costs awarded is in addition to the costs of Rs.1500/- as already awarded in terms of order dated 27.05.2022 passed by the learned Family Court, Karnal. In the event, learned Presiding Officer is not holding the Court on 09.11.2022, the needful be done on the next effective date of hearing fixed in the matter. The petition is being disposed of without issuance of notice to the respondent to avoid unnecessary delay in the disposal of the matrimonial dispute.

27.10.2022

*renubala***(VIVEK PURI)
JUDGE**

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