

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

**CRM-M-53389-2022**

**Date of decision : 18.11.2022**

**Sukhdev Singh**

**.....Petitioner**

**versus**

**Paramjit Kaur and another**

**..... Respondents**

**CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

**\*\*\***

Present :- Mr. Karan Vir Nanda, Advocate  
for the petitioner.

**\*\*\***

**RAJESH BHARDWAJ, J. (Oral)**

Petitioner has approached this Court for quashing of order dated 23.02.2017 whereby an appeal filed by the petitioner-husband impugning the order dated 29.09.2015 vide which the petitioner was directed by the Family Court to pay maintenance @ Rs.7,000/- per month in a Criminal Appeal bearing No.385 of 2015 and Filing No.2887 of 2015 which was dismissed in default for non-appearance arising out of a petition under Section 125 Cr.P.C. bearing No.13060 of 2013 dated 17.09.2010 and order dated 31.08.2022 passed by learned Additional Sessions Judge, Chandigarh whereby an application under Order 9 Rule 4 CPC for restoration of above-mentioned appeal has been dismissed.

Learned counsel for the petitioner has submitted that inadvertently, the petitioner could not appear before the Appellate Court and on account of the same, the appeal filed by him was dismissed in default by the learned Additional Sessions Judge, Chandigarh vide order dated 23.02.2017. He has further submitted that immediately thereafter, the petitioner filed an application under Order 9, Rule 4 CPC for restoration of the appeal. However, learned Appellate Court declined the same by holding that the proceedings under Section 125 Cr.P.C. are criminal in nature and thus, the provisions of CPC would not be applicable. He submits that the

petitioner is a senior citizen and his absence from the learned Appellate Court was not intentional. He has submitted that on the hyper technical grounds, the learned Appellate Court has declined the petition of the petitioner by not restoring the same and decide it on merits. He submits that the petitioner will suffer an irreparable loss if his appeal is not heard on merits.

I have heard counsel for the petitioner and per used the record.

Admittedly, the petitioner before this Court is the husband. By virtue of order dated 29.09.2015, the Family Court granted maintenance to the respondent-wife and the minor son @ Rs.7,000/- per month. The petitioner has duly filed the appeal assailing the same. However, this appeal had not been decided on merits and the same was dismissed in default. This Court would not like to go into the legalities of the issue raised regarding the maintainability of the petition filed, however, it is apparent that the appeal filed by the petitioner has not been heard on merits. In the overall facts and circumstances of the case, this Court is of the opinion that this is a fit case where this Court should invoke its power under Section 482 Cr.P.C. to meet ends of justice by directing the learned Appellate Court to restore the appeal which has been dismissed in default and decide the same on merits. Accordingly, both the above-mentioned impugned orders are *set aside*. The Appellate Court is directed to restore the appeal to its original number and decide it on merits in accordance with law.

In view of the above, petition stands disposed of.

18.11.2022  
m. sharma

( RAJESH BHARDWAJ )  
JUDGE

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