

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

121

CRR(F)-135-2023

Date of decision: 30.01.2023

KAMAL CHANDELIYA ALIAS KAMAL KUMAR Petitioner

Versus

DEEPIKA Respondent

CORAM : HON'BLE MR. JUSTICE ALOK JAIN

Present :- Mr.Sanjay Verma, Advocate
for the petitioner

ALOK JAIN, J. :

The present petition has been filed for setting aside the order dated 06.12.2022 passed by the learned Additional Principal Judge, Family Court, Gurugram, whereby the defence of the petitioner has been ordered to be struck off.

The proceedings pertain to Section 125 Cr.P.C. for grant of maintenance, which have been initiated by the respondent-wife. It is submitted by learned counsel for the petitioner that petitioner was served for the first time on 25.07.2022 and subsequently the matter was adjourned due to non-availability of the Presiding Officer. However, on 06.12.2022, the petitioner filed an application for grant of permission to be represented by a counsel and an application for a short adjournment for filing the reply was also filed. He further submits that the learned Court vide the impugned order allowed the first application and permitted the petitioner to be assisted by a counsel. However, the application for a short accommodation was dismissed only on the ground that the reply has not been filed. He further submits that the learned Court below has wrongly struck off the defence of the petitioner as the evidence of the respondent-wife, who is the petitioner in the proceedings before the Court below was also not on record and there

was no occasion to struck off the defence of the petitioner-husband. He further submits that despite the order dated 25.07.2022, even the respondent-wife has not submitted her affidavit of disclosure of assets and liabilities as both the parties were directed to supply a copy of the affidavits in advance.

A perusal of the record and assistance by learned counsel for the petitioner demonstrates that there is a patent error in the impugned order dated 06.12.2022. Issuance of notice of motion shall only procrastinate the proceedings and no useful purpose would be served in the larger interest.

Accordingly, the present petition is allowed and the order dated 06.12.2022 is set aside to the extent that the petitioner be granted one effective opportunity to file his reply to the application for the interim maintenance as well as for the main petition on the date already fixed i.e. 11.04.2023. The petitioner also undertakes to file his affidavit in compliance of the order dated 25.07.2022 passed by the Court below with regard to his assets and liabilities in compliance of the directions issued by the Hon'ble Supreme Court in the case of **“Rajneesh vs. Neha and another, Criminal Appeal No.730 of 2020, decided on 04.11.2020”**, on the said date i.e.11.04.2023. However, the same shall be subject to payment of cost of Rs.5000/- to be paid to the respondent-wife on the date fixed along with the compliance report.

(ALOK JAIN)
JUDGE

30.01.2023

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No