

CR-1222-2020 (O&M)

246-2

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-1222-2020 (O&M)

Date of decision: April 12, 2023

Deepander

....Revisionist

versus

Kavita

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** None for the revisionist.

Mr. J.S. Yadav, Advocate for respondent-wife.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside orders dated 24.01.2020 (Annexure P-1) and dated 12.02.2020 (Annexure P-4) passed by learned Principal Judge, Family Court, Rewari whereby in divorce petition filed by wife, revisionist-husband was proceeded against *ex parte* and an application filed by revisionist under Order IX Rule 7 of Code of Civil Procedure, 1908 (for short 'CPC'), was dismissed.

2. The revision petition is premised on the averments that revisionist and respondent performed love marriage on 11.01.2017. After sometime, respondent-wife became adamant and started quarrelling with revisionist-husband. On 18.01.2018, respondent-wife filed a petition under Section 13(1) (1A) of the Hindu Marriage Act, 1955 (for short 'the Act') for getting divorce from revisionist-husband. She also filed an application under Section 24 of the Act seeking maintenance pendente lite. He would further contend that learned Family Court vide order dated 28.01.2019 granted maintenance pendente lite to respondent @ Rs.6,000/- per month along with litigation expenses to the tune of Rs.6,600/-.

Thereafter, case proceeded and matter was being adjourned from time to time. On

CR-1222-2020 (O&M)

22.01.2020, last opportunity was granted to lead evidence and matter was adjourned to 24.01.2020. On 24.01.2020, learned Court below proceeded *ex parte* against revisionist vide impugned order (Annexure P-1). Revisionist moved an application on 31.01.2020 under Order IX Rule 7 of CPC seeking to set aside aforesaid *ex parte* order. Vide impugned order dated 12.02.2020 (Annexure P-4), said application was also dismissed. Hence, the instant petition.

3. I have heard learned counsel for respondent-wife and gone through the record.

4. Revision petition was filed in the year 2020. Today when taken up for hearing, there is no representation on behalf of revisionist. It seems that revisionist is not interested in pursuing the matter.

4.1 Apart therefrom, impugned orders dated 24.01.2020 (Annexure P-1) and 12.02.2020 (Annexure P-4) passed by learned Family Court, Rewari are premised, *inter alia*, on the following reasoning:

Order dated 24.01.2020 proceeding *ex parte* against revisionist-husband

*“Neither payment made nor respondent is present despite last opportunity. In this scenario, this Court having no alternative except to proceed respondent *ex parte*. However, learned counsel for respondent requested not to proceed respondent *ex parte*. But keeping in view the fact that neither respondent is appearing himself nor adducing his evidence despite last opportunity, therefore, respondent is proceeded *ex parte*. Since petitioner has already closed her evidence, therefore, case is adjourned to 31.01.2020 for *ex parte* arguments.”*

Order dated 12.02.2020 dismissing application of petitioner-husband seeking to set aside *ex parte* order dated 24.01.2020

“Pondered over the submissions raised by learned counsel for both the parties, I reached to the findings, vide order, dated 03.09.2019, the defence of respondent was struck off, since the evidence of the petitioner was present but the respondent has failed to make the payment of maintenance pendent lite since the case has been adjourned number of times but the respondent has failed to pay the arrears of maintenance pendent lite and case was posted for evidence of petitioner. Thereafter, case was posted for 05.09.2019. On that day no payment was made. Thereafter, case was adjourned for

10.09.2019. On 10.09.2019 the cross examination of witness Kavita was deferred on the request of learned counsel for respondent and case was adjourned to 13.09.2019. On 13.09.2019, copy of order, dated 11.09.2019 passed by Hon'ble High Court in CR-5649-2019 was received in this Court, in which the respondent was directed to deposit of Rs.35,000/- which is stated to be 50% of the arrears, before this Court within 15 days i.e., on or before 27.09.2019. Hon'ble High Court has further directed that if the respondent deposit the said amount on or before 27.09.2019, the order striking off the defence of the petitioner shall be kept in abeyance. Keeping in view of the directions of Hon'ble High Court for making the payment, respondent made the payment of Rs.35,000/- so the petitioner on 29.09.2019.

Learned counsel for respondent was directed to cross examine the evidence of the petitioner, if he wants to get any instructions from the respondent then only case may be adjourned for some short date and case was adjourned to 01.10.2019 and on that day also learned proxy counsel for respondent sought adjournment and case was adjourned to 04.10.2019 and again the case was adjourned to 15.10.2019. On 15.10.2019 PW Kavita was cross examined and petitioner closed her evidence and case was posted for 25.10.2019. But on 24.10.2019 this Court has preponed the case and adjourned the case for 15.11.2019 since 25.10.2019 was declared holiday on account of Diwali break. On 15.11.2019, copy of order dated 14.11.2019 passed by Hon'ble High Court in CR-5649-2019 received in which this Court was directed to permit the petitioner who is respondent in the present case to lead his evidence. Accordingly, case was posted for 02.12.2019 for evidence of respondent. On 02.12.2019 there was no evidence of respondent and case was posted for 04.01.2020. On that day also neither evidence of respondent was present nor payment made and on the request of counsel for respondent case was adjourned to 22.01.2020 for making payment as well as for RWs. On 22.01.2020 also neither payment made nor evidence of respondent was present and case was adjourned to 24.01.2020. On 24.01.2020 also neither payment made nor evidence of respondent was present and this Court having no alternative except to proceed the respondent ex parte, however, learned counsel for respondent has requested not to proceed the respondent ex parte. But keeping in view the fact that neither respondent was appearing himself nor adducing his evidence despite last opportunity, therefore, respondent proceeded against ex parte and case was posted for 31.01.2020 for ex parte arguments. On 31.01.2020 case was further posted for 07.02.2020. On 07.02.2020, vakalatnama along with application for setting aside ex parte, order dated 24.01.2020 filed by Sh. Sandeep Yadav, Advocate, however, it is a case in which each and every proceeding is in the knowledge of the respondent but who only wants to prolong the proceedings of the case. It is admitted case of the parties that a case FIR No. 258 dated 16.08.2016 under Sections 323/341/195A/506/365

CR-1222-2020 (O&M)

IPC at P.S. Khol is lying registered against the respondent and police is searching him and there are no chances of appearing of respondent.

Considering all the facts and circumstances of the case, no ground is made out to allow the application dated 31.01.2020 since respondent neither making the payment nor producing his evidence. Therefore, same is hereby dismissed. Now to come upon for 20.02.2020 for ex parte arguments.”

- 5. Having heard the arguments of learned counsel for respondent-wife, there seems no room for interference in the aforesaid valid reasons recorded by learned Court below.
- 6. No material irregularity in law or procedure has been committed by learned Court below, so as to exercise extraordinary revisional jurisdiction herein.
- 7. In the premise, instant revision petition is dismissed.
- 8. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

April 12, 2023
mahavir

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