

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CR No.1444 of 2023(O&M)

Date of decision: 28.03.2023

Amit Gulrajani

....Petitioner

V/s

Aditi Subbiah

....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Aditya Jain, Advocate, for the petitioner.

VIKAS SURI, J. (Oral)

The challenge raised in the this petition preferred under Article 227 of the Constitution of India is to the order dated 16.08.2022 (Annexure P-5), whereby the defence of the petitioner-husband was struck off and to the order dated 02.02.2023 (Annexure P-7), whereby the application for setting aside the aforesaid order dated 16.08.2022, was dismissed by the Principal Judge, Family Court, Gurugram.

It is pleaded that on account of matrimonial discord, the parties are in litigation. The respondent-wife has moved a petition under Sections 7 and 8 of the Guardians & Wards Act, 1890 for her appointment/declaration as sole guardian of the minor daughter-Henna and continuation of exclusive physical custody.

Notice of the petition was issued by the Family Court at Gurugram and the petitioner-husband was served for 29.07.2021, whereupon he cause appearance through counsel. Thereafter, the matter kept getting adjourned with direction to the parties to appear in person for referring the matter for mediation.

Vide order dated 27.05.2022, the Principal Judge, Family Court, took up the file while holding Court at Camp Court, Sohna and adjourned the case to 16.08.2022, with last opportunity being granted for filing written statement.

It is notable that the said order reflects that neither the parties, nor their counsel were present on the said date as the proceedings were not held at Gurugram. On the following date, i.e. 16.08.2022, the impugned order was passed, whereby the defence of the petitioner-husband was struck off and the case was adjourned for evidence of the petitioner. On the very next date, the petitioner moved an application for setting aside the order dated 16.08.2022, which was dismissed vide order dated 02.02.2023.

Learned counsel for the petitioner submits that the petitioner is based out of Singapore and due to travel restrictions on account of Covid-19 pandemic, the parties could not be present in person before the Family Court for the matter being referred for mediation. The petitioner was under the impression that the written statement was to be filed if the mediation process did not fructify in an amicable settlement and as such the intention of the petitioner was not otherwise. Moreover, if proper opportunity is not granted to the petitioner-husband to contest the petition, being the contesting respondent, he would be seriously prejudiced.

Learned counsel for the petitioner further submits that the petitioner seeks only one opportunity to file the written statement, which should have been permitted by the Principal Judge, Family Court, subject to payment of costs as per the law settled by the Apex Court. In that regard, reference is made to the decision in ***Desh Raj vs. Balkishan (Dead) through Proposed Legal Representative Ms. Rohini***, (2020) 2 SCC 708, ***Kailash vs. Nanko and others***, (2005) 4 SCC 480 and ***Bharat Kalra vs. Raj Krishan Chhabra***, 2022 SCC OnLine SC 613.

I have heard learned counsel for the petitioner and with his able assistance, perused the material placed on record before this Court.

A perusal of the interlocutory orders would show that the matter was being adjourned by the Principal Judge, Family Court for various reasons, including for filing application under Section 13 of Family Court Act, power of attorney and written statement, while the presence in person of the parties was being directed for referring the matter for mediation.

It is only while holding Court at Camp Court, Sohana, in the absence of the parties and their counsel, last opportunity for filing written statement was ordered and on the very next date the defence was struck off.

I am of the considered view, in light of the law settled by the Apex Court and in the interest of justice, the Family Court should have granted one more opportunity for filing the written statement and the respondent-wife should have been compensated with costs, as denying the benefit of filing the written statement was not warranted in view of the peculiar facts of the case noticed above. It is well settled that the procedural law is subservient to and is in aid of justice. Moreover, no prejudice would be caused to the respondent-wife in case the petition is decided on merits, after affording a proper opportunity to contest the same.

In the totality of circumstances and peculiar facts of the present case, the instant petition is being disposed of without issuing notice to the respondent, to avoid any further delay in proceedings as well as additional expenses that the respondent-wife would have to incur to defend the present proceedings.

In view of the above, the present revision petition is allowed and the impugned order dated 16.08.2022, striking off the defence of the petitioner and order dated 02.02.2023, dismissing the application for setting aside the order dated

16.08.2022, are set aside.

Accordingly, one more opportunity is granted to the petitioner-husband to file the written statement on or before the next date before the Family Court, i.e. 06.05.2023, subject to payment of Rs.25,000/- as costs to be paid to the respondent-wife. It is, however, made clear that failing to file written statement or pay costs in terms of this order, the petitioner would not be entitled to any further opportunity for the same purpose

This revision petition is disposed of in the aforesaid terms.

(VIKAS SURI)
JUDGE

March 28, 2023

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Whether speaking/reasoned: Yes

Whether reportable: No