

112

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

**CR-2134-2023 (O&M)
Date of Decision: 13.04.2023**

Lakhwinder Singh

...Petitioner

Versus

Rajni

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Hitesh Verma, Advocate
for the petitioner.

ARUN MONGA, J. (ORAL)

CM-6282-CII-2023

Allowed as prayed for, subject to all just exceptions.

Main case

Petition herein is for setting aside order dated 11.02.2022(Annexure P-3) passed by Ld. Additional Principal Judge, Family Court, Bathinda, whereby defence of petitioner was struck off in an application bearing CM No.245 of 2021 dated 04.08.2021 filed by respondent/applicant under Order IX Rule 13 of the Code of Civil Procedure, 1908 (for brevity, 'CPC').

2. Succinct facts first, as pleaded in the instant petition.

2.1. Petition under Section 13 of Hindu Marriage Act, 1955 was preferred by petitioner-husband against respondent-wife for dissolution of their marriage by way of decree of divorce. In the said petition, summons were issued, but respondent-wife failed to put in appearance and accordingly she was proceeded *exparte*. Vide judgment and decree dated 27.07.2021, the petition preferred by petitioner-husband was allowed and decree of divorce was granted.

2.2. Respondent-wife moved an application dated 04.08.2021 (Annexure P-2) under Order IX Rule 13 CPC for setting aside *ex-parte* decree. In the said application, notice was issued to non-applicant-petitioner-husband and he appeared on 07.09.2021, through his counsel. Vide impugned order dated 11.02.2022, Ld. Court below ordered the defence of petitioner to be struck off as he failed to file reply within the statutory period.

3. Given the nature of order being passed, there is no necessity to issue notice to respondent, as no serious prejudice would be caused to her. Notice to respondent is thus dispensed with.

4. I have heard learned counsel for petitioner and perused the case file.

5. Rules of procedure are handmaid of justice and cannot be allowed to thwart real and substantial justice between the parties. Prejudice would indeed be caused to petitioner-husband unless afforded an opportunity to file reply to the application.

6. Provisions contained in Order VIII Rule 1 CPC though ought to be adhered to but learned Court below could have still permitted petitioner to file reply, subject to certain penalty as a deterrent. Otherwise also, provisions contained in Order VIII Rule 1 *ibid* have been held to be directory in nature by the Supreme Court in ***Salem Bar Association Vs. UOI, 2005(6) SCC 344***. The Courts should not, therefore, be too harsh to disallow filing of reply to the application.

7. Given the number of opportunities already taken by petitioner to file reply, apart from having jumped the statutory period of 90 days, as prescribed under CPC, ordinarily this Court would not have interfered in the impugned order, however, learned counsel for petitioner submits that petitioner has tendered an unconditional apology *qua* his neglect.

8. Since respondent-wife is currently residing in Dubai, she has to make arrangement for travel from there to contest the trial and, therefore, this Court is inclined to give one opportunity to petitioner subject to payment of costs of Rs.1 lakh. However, since learned counsel for petitioner submits that petitioner-husband is currently not earning anything and has suffered losses during covid pandemic, Ld. Trial Court to proceed further with application moved by respondent-wife under Order IX Rule 13 CPC while granting one opportunity to petitioner to file reply subject to payment of costs of Rs.50,000/- to be paid to respondent-wife.

9. Revision stands disposed of and impugned order is modified accordingly.

10. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

April 13, 2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No