

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 115

Criminal Revision (F) No.648 of 2023

Date of Decision: April 28, 2023

Mandeep

..... PETITIONER(S)

VERSUS

Ekta & another

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

. . .

PRESENT: - Mr. Manish Mehta, Advocate, for the petitioner.

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Tribhuvan Dahiya, J (Oral)

This petition has been filed for setting aside the order dated 16.03.2023 passed by the Family Court at Narnaul, whereby the petitioner/husband's defence has been struck off in an application under Section 125 Cr.P.C. for maintenance filed by the respondent-wife and her minor daughter.

2. Learned counsel for the petitioner, by referring to short orders passed by the Family Court, submits that after being served, the petitioner appeared before the Family Court on 21.05.2022. On the next date, i.e. 06.08.2022, he was granted permission to engage a counsel, and on his request, case was adjourned to 28.09.2022 for filing reply and affidavit of assets and liabilities. Also, keeping in view the fact that the petitioner was serving in the Indian Army, the Family Court directed him to pay ₹ 12,000 per month as maintenance to the respondent-wife, who had no source of income. The said amount was ordered to be adjusted at the time of deciding

the interim maintenance application. On 28.09.2022, the Presiding Judge was on casual leave, therefore, case was further adjourned to 12.12.2022. On that date, the respondent-wife made a statement that petitioner-husband had transferred the maintenance amount of ₹ 50,000 in her bank account. The case was then adjourned to 01.02.2023 for filing reply to the petition and application for interim maintenance filed by the respondent, as well as for filing affidavit of assets and liabilities. On 01.02.2023, a request for adjournment was made on behalf of the petitioner-husband to file reply and affidavit, which was accepted by the Family Court, and the case was adjourned to 16.03.2023 for the purpose, on this date, the impugned order was passed striking off petitioner's defence on his failure to file reply to the petition and the application for interim maintenance, as well as the affidavit of assets and liabilities.

3. Learned counsel for the petitioner submits that the petitioner is serving in the Indian Army, and is posted at a far off place in Leh. That is the only reason he could not come to Narnaul, for filing the reply and affidavit. He was facing difficulty in getting leave from the authorities concerned. In case one opportunity is granted, the petitioner will file the reply as well as the affidavit. Besides, the trial is at initial stage only, and the respondent-wife has not led any evidence so far. It stands adjourned to 06.07.2023.

4. The submissions made by learned counsel for the petitioner have been considered. The petitioner is serving in a remote area in the Indian Army, and due to not being permitted leave, he could not file the reply as well as affidavit of assets and liabilities before the Family Court. At the same time, he had paid an amount of provisional maintenance granted to the

respondent-wife, and is seeking one opportunity to complete the pleadings. Striking-off defence will seriously prejudice his rights in the case. Since trial is at the initial stages as none of the witnesses of the respondent has been examined so far, no prejudice will be caused to her in case the petitioner is allowed one more opportunity.

5. In this background and in the interests of justice, this Court deems it appropriate to grant one last opportunity to the petitioner to file reply to the petition and application for interim maintenance, as well as affidavit of assets and liabilities on or before the next date of hearing, i.e., 06.07.2023 before the Family Court, subject to payment of ₹ 5,000 as costs to the respondent-wife.

6. Ordered accordingly.

7. The petition stands allowed.

(Tribhuvan Dahiya)
Judge

April 28, 2023

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Whether Speaking/ Reasoned:

Yes/ No

Whether Reportable:

Yes/ No