

CR-2839-2023 (O&M)

117

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2839-2023 (O&M)

Date of decision: May 08, 2023

Hemant Thakur

....Revisionist

versus

Sugandha

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Ms. Lipika Mamli, Advocate for revisionist.

ARUN MONGA, J. (ORAL)

Petition herein *inter alia* is for setting aside impugned order dated 22.03.2023 (Annexure P-3) passed by learned Principal Judge, Family Court, Gurugram, whereby application filed by revisionist/husband to allow him to file written statement was dismissed. Further sought to allow the revisionist to file written statement and lead evidence.

2. The revision petition is premised on the averments that respondent/ wife filed petition under Section 13(1) of the Hindu Marriage Act, 1955 against petitioner. Marriage of petitioner and respondent was solemnized on 10.01.2017. Revisionist filed an application under Section 151 CPC for allowing him to file written statement. Vide impugned order dated 22.03.2023, application was dismissed.

3. Learned counsel for revisionist/husband submits that husband could not file written statement as talks of compromise were going on between the parties.

4. Considering the nature, facts and circumstances of the case, issuance of notice to respondent/wife seems unnecessary and is, therefore, dispensed with.

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

6. Impugned order is premised on the following reasons:-

“5. From the perusal of record, it is revealed that memo of appearance on behalf of respondent was filed on 12.10.2021 and thereafter the case was adjourned for 15.02.2022 and 02.05.2022. On 02.05.2022, written statement was not filed and the case was adjourned

CR-2839-2023 (O&M)

for 29.07.2022 for filing written statement subject to cost of Rs.500/-. On dated 29.07.2022 neither cost was paid nor written statement was filed. Rather an application to adjourned the petition sine-die was filed on behalf of the respondent. Vide order dated 29.7.2022, defence of the respondent was ordered to be struck off.

xx xx xx xx

Above orders dated 29.07.2022 are self explanatory, and therefore, these do not need to be set aside or modified. There are no grounds to allow the application, therefore, the same stands dismissed.”

7. 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 written statement, 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 Court should not, therefore, be too harsh to disallow filing of written statement.
8. Trite law it is that procedure is a handmaid of justice and, ought not be given precedence at the cost of subjugation of substantive justice. Prejudice would indeed be caused to revisionist/husband unless afforded an opportunity to file written statement.
9. Consequently, revisionist/husband is granted one opportunity to file written statement subject to payment of costs of Rs.10,000/- to be paid to respondent/wife. Revision stands disposed of and impugned order is modified accordingly.
10. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 08, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No