

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

CRR(F)-1002-2023

Date of Decision: 17.08.2023

ANIL KUMAR

... PETITIONER

V/S

MUKESH RANI AND OTHERS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Ashok Arora, Advocate for the petitioner.

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VIVEK PURI, J. (ORAL)

1. The petitioner has assailed the order dated 12.04.2023 passed by the learned Family Court, Hisar in MNT No. 125/288/2019 titled as Mukesh Rani and others vs. Anil Kumar whereby the application for setting aside the *exparte* order was dismissed.

2. Learned counsel for the petitioner contends that the respondents have instituted an application under Section 125 Cr.P.C. for grant of maintenance. The petitioner could not put appearance in the learned Family Court on 17.02.2023 as he was suffering from fever. The case in the learned Family Court was adjourned to 12.04.2023. On that very day, the petitioner had moved an application for setting aside the *exparte* proceedings. The case was initially taken up in the pre-lunch session. A passover was sought on behalf of the respondents and the matter was directed to be taken up in the post-lunch session. However, in the post-lunch session, none had appeared on behalf of the petitioner and accordingly, the application for setting aside the *exparte* order was dismissed for non-prosecution. The reason for non-appearance in the post-lunch session has been assigned to the effect that the counsel representing the petitioner was busy in another Court. It has also been submitted that the learned counsel for the respondents had endorsed his 'no

objection' on the application for setting aside the *exparte* proceedings subject to heavy costs.

3. It is significant to note that the application for setting aside the *exparte* proceedings was moved on the following date of hearing when the petitioner was proceeded against *exparte*. Even, learned counsel for the respondents has endorsed his 'no objection' for setting aside the *exparte* proceedings subject to heavy costs. The reason assigned for non-appearance on 17.02.2023 is the illness of the petitioner and the reason for non-appearance of the counsel in the post-lunch session on 12.04.2023 is to the effect that the learned counsel for the petitioner was busy in another Court.

4. The proceedings in the trial Court are stated to be fixed for 11.09.2023 for *exparte* evidence of the respondents. It shall be appropriate if the *exparte* proceedings against the petitioner are set aside so that the controversy is adjudicated on merits. For the lapse on the part of the petitioner, he can be burdened with costs.

5. In these set of circumstances, the petition is allowed and the *exparte* proceedings initiated against that petitioner in the learned Family Court are set aside, subject to payment of Rs. 5,000/- as costs to the respondents. The order is being passed without issuance of notice to the respondents to avoid further unnecessary delay in the proceedings under Section 125 Cr.P.C. pending in the learned Family Court.

17.08.2023

Janki

**(VIVEK PURI)
JUDGE**

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