

2023:PHHC:103524

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

CRM -32229-2023 in/and

CRR(F)-1118-2023

Date of Decision: 09.08.2023

AZRU@ AJARUDIN

... PETITIONER

VS.

SUWALIYA

.. RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present : Mr. Arjun Atri, Advocate, for the petitioner.

VIVEK PURI, J.(ORAL)

1. The petitioner is seeking to set aside the *ex-parte* order dated 14.10.2021, judgment dated 23.12.2021 and order dated 08.05.2023 passed by the learned Family Court.

2. The respondent had instituted a petition under Section 125 Cr.P.C. for enforcement of her claim for maintenance. In terms of the order dated 14.10.2021 passed by the learned Family Court, the respondent was proceeded against *ex parte*. The application under Section 125 Cr.P.C was allowed *ex parte* by the learned Family Court, vide order dated 23.12.2021 and a sum of Rs.6,000/- was awarded on account of maintenance. The petitioner had instituted an application for setting aside the *ex parte* order of maintenance and the same has been dismissed by the learned Family Court vide order dated 08.05.2023.

3. Learned counsel for the petitioner contends that the petitioner was never served and had no notice with regard to the proceedings under Section 125 Cr.P.C. instituted by the respondent. Consequently, he seeks to set aside the *ex parte* order and submits that the petitioner may be permitted to contest the claim of the respondent under Section 125 Cr.P.C. on merits.

4. On a query, learned counsel for the petitioner submits that till date not even a single penny has been paid on account of arrears of maintenance.

5. It is significant to note that Annexure P-2 is the application for setting aside the *ex parte* order dated 23.12.2021, wherein, the petitioner has put forth a specific and categoric case that he had engaged a counsel to defend the petition but he had not appeared in the trial Court. In such circumstances, the plea put forth on behalf of the petitioner and reasons assigned for non-appearance to the effect that his service was not effected and had no notice with regard to the proceedings under Section 125 Cr.P.C. instituted by the respondent, cannot be accepted. There is lack of material to indicate that there were sufficient reasons and good cause which prevented the petitioner from appearing in the Family Court when the proceedings under Section 125 Cr.P.C. were initiated against the petitioner. It has also been observed by the learned Family Court that the parties are otherwise belonging to same family and it is improbable that he may not having the notice of the proceedings. The observations recorded by the learned Family Court are as following:-

“As mentioned in the preceding paragraphs, learned counsel for the applicant, during arguments, relied upon the report of Process Server as present on the notice issued to applicant and argued that no summon was ever served upon applicant and that he had no knowledge of pendency of this case. However, his argument falls flat when the contents of the application under consideration, are perused. In this application, it is mentioned that the applicant had engaged a counsel to defend the petition. This shows that the applicant had due knowledge of pendency of petition under Section 125 Cr.P.C. against him. He had even engaged an advocate, although he has nowhere mentioned the name of said advocate. The case was filed on 15.06.2020. As per the

pleading of applicant, he had engaged the counsel for appearing in the court on 14.10.2021. It cannot be believed that after said date, the applicant did not even contact his lawyer, if any, for apprising himself about the proceedings that took place on 14.10.2021. It further cannot be believed that he did not even inquire about the next date of hearing fixed in main petition. It is clear from the contents of the application itself that the applicant had due knowledge of pendency of case under Section 125 Cr.P.C. against him but that he never bothered to contest the petition. As such, the present application is a mere miserable attempt on the part of the applicant to prolong the proceedings of execution petition pending against him. Moreover, admittedly, both the parties belong to same family. It cannot be believed that the applicant did not know that respondent/D.H. has filed the case against him in the court for claiming maintenance. The pleadings are misleading and are attempted to misguide the court. Such farce pleadings cannot be entertained at all. Resultantly, finding no merit in the application for setting aside ex parte order and judgment, the same is dismissed”

6. The observations recorded by the learned Family Court while dismissing the application for setting aside the *ex parte* order cannot be termed to be based on irrelevant ground. No justified ground is made out to set aside the *ex parte* order.

7. Keeping in view the above, no ground to interfere in the present petition is made out.

8. Dismissed.

09.08.2023
smriti

(VIVEK PURI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No