

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3612-2022 (O&M)

Date of Decision: August 17, 2023

Sandeep Kumar

...Petitioner

Versus

Yadwinder Kaur

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Petitioner-in-person with
Mr.A.S.Jawandha, Advocate.

Respondent-in-person with
Mr.Sanjeev Kumar Arora, Advocate.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 01.08.2022, passed by learned Principal Judge, Family Court, whereby, an application filed by the respondent-wife, for striking off the defence of the petitioner-husband was allowed.

The facts, as culled out from the paperbook are that, initially, Yadwinder Kaur-respondent-wife had filed a petition under Section 13 of the Hindu Marriage Act, thereby, seeking decree of divorce. During the pendency of said petition, in pursuance of an application under Section 24 of the Hindu Marriage Act, interim maintenance was fixed @ Rs.5,000/- per month, from the date of filing of the application, along with litigation

CR-3612-2022

expenses to the tune of Rs.3,000/-. However, despite the specific order passed, vis-a-vis, fixation of interim maintenance, the same was not complied with by the petitioner-husband and thereupon, an application was filed by the respondent-wife for defence of the husband to be struck off.

Consequently, vide impugned order, while observing that petitioner-husband had not paid the maintenance to the respondent-wife from July 2019 till July 2022 @ Rs.5,000/- per month along with litigation expenses, less the payment made i.e. Rs.1,74,000/- (180000+3000-9000), the application was allowed and the defence of the petitioner-husband was struck off.

Feeling aggrieved by the aforesaid order, the petitioner-husband has filed the present petition. In pursuance of the notice issued, respondent-wife had made appearance through counsel.

Learned counsel for the parties heard.

At the very outset, it is pertinent to mention that there was another CR-5909-2022, which was filed by the petitioner-husband, thereby, challenging the order, vis-a-vis, fixation of interim maintenance @ Rs.5,000/- per month. The said revision petition was also fixed for today. In the Court, in the aforesaid revision petition, the petitioner-husband has paid the residue amount of arrears, to the extent of Rs.30,000/-. Thereupon, learned counsel for the petitioner-husband had given a statement that he does not want to pursue with the revision petition (CR-5909-2022) and the same be dismissed as withdraw and it was so ordered accordingly.

In the backdrop of the aforesaid revision petition, having so

CR-3612-2022

dismissed as withdrawn, a query was put by this Court about any outstanding amount, on account of arrears of maintenance. However, it has been stated by learned counsel for the respondent-wife that the entire outstanding amount, upto date has since been paid.

Though, the respondent-wife, in the petition under Section 13 of the Hindu Marriage Act, had asserted about petitioner-husband to be working with his father, in a garment shop, being run in the Main Bazar, Faridkot, but stated to be existing outside a locked shop, meaning thereby, it is not the shop, so being run and in these circumstances, the version of the present petitioner, about his father to be a cart-puller, who sells kids clothing, seems to be true. In fact, it is specific version of the petitioner-husband that he is employed as a servant in a kiriyana shop. That being so, it has been submitted that it was only on account of constrained circumstances, due to paucity of funds that the petitioner-husband could not make payment of the interim maintenance, so fixed by the Court. Under these constrained circumstances, the defence of the petitioner-husband has been struck off.

On query put by the Court, it has been disclosed by both learned counsel for the parties that after passing of the impugned order, the case has not made any progress. Only affidavit, by way of examination-in-chief of respondent-wife has been brought on record and the case is still at the stage of conducting of cross-examination of the respondent-wife, when the impugned order was passed.

As already observed aforesaid, the payment of entire arrears have been cleared off. Considering the same, it shall be just and appropriate,

if the case, such like present one, which is under Section 13 of the Hindu Marriage Act, is decided on its merits, by giving opportunity to both the sides to lead evidence. Precisely, considering the same and also considering the fact of the arrears having been cleared, without prejudice to the rights of the parties, to be adjudicated on merits, the impugned order dated 01.08.2022 is set aside. The parties are directed to make appearance before learned Court below on 30.08.2023 and on that day, cross-examination of the respondent-wife, which is still pending, be conducted, at the behest of petitioner-husband. But however, if for any constrained circumstances, the concerned Court finds it difficult to record the cross-examination and complete the same, on that day, then the Court concerned shall ensure the recording the cross-examination of the respondent-wife, within a period of seven days thereafter.

In view of the aforesaid terms, the present revision petition stands allowed.

August 17, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No