

CR-3053-2021 (O&M)

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

Sr. No.118-2

**CR-3053-2021 (O&M)
Date of Decision: 25.05.2023**

HARSH MADHOK

....Petitioner

Versus

NEHA MADHOK @ NEHA BHASIN

..... Respondent

CORAM: HON'BLE MRS JUSTICE ARCHANA PURI

Present:- Mr. Abhinav Sood and Ms. Anmol Gupta, Advocates
for the petitioner.

Mr. Yogesh Goel, Mr. Lakshay Goel and
Mr. Mayank Kalra, Advocates
for the respondent.

ARCHANA PURI, J. (Oral)

The Present petition has been filed under Article 227 of the Constitution of India, thereby seeking issuance of time bound directions to the Family Court, Ludhiana, to dispose of the HMA Petition No.1103 dated 21.12.2016 (Annexure P-1), to decide the matter in an expedient and time bound manner, in the interest of justice and equity.

It is averred in the petition that the petition bearing No.1103 dated 21.12.2016 was filed by the petitioner under Section 13 (1) (ia) of Hindu Marriage Act read with Section 151 CPC, for seeking decree of divorce. The said petition was transferred by this Court vide order dated 05.09.2018 from Family Court, Gurugram to Family Court, Ludhiana. In the petition, details of the matrimonial bickering between the parties, as

such, has been given, which do not call for any discussion, for the purposes

CR-3053-2021 (O&M)

of disposal of the present petition. The only grievance expressed by the petitioner is that the case is proceeding at the snail's pace before learned Lower Court. No further proceedings, as such, are being conducted in accordance with the provision of Section 21-B of Hindu Marriage Act. In the given circumstances, a prayer has been made for a time bound direction to the Family Court, Ludhiana, to conduct the proceedings expeditiously.

However, learned counsel for the respondent has resisted the claim of the petitioner, as he submits that in fact, it was only on account of lapse, on the part of the petitioner, time and again, that the proceedings are not making any progress before learned Lower Court.

From the paperbook, it is evident that vide order dated 01.12.2021, report was called from the trial Court regarding alleged slow pace of proceedings and the said report was received from the concerned Judicial Officer, which is bearing No. 359 dated 24.12.2021. From the contents of the said report, it is evident that the petition under Section 13 of Hindu Marriage Act was filed on 21.12.2016 and thereupon, respondent had made appearance on 11.05.2017. Further, transfer application was filed and the case was finally transferred from Family Court Gurugram to Family Court, Ludhiana, vide order dated 05.09.2018, passed by this Court. Thereafter, the present petitioner had knocked the door of Hon'ble Supreme Court and the proceedings were stayed. Thereafter, no effective proceedings were carried out and finally the said petition was dismissed by Hon'ble Supreme Court, vide order dated 13.11.2019. Furthermore, from the report, it is evident that due to the grim situation, on account of Covid-19, much progress was not made thereafter in the case. Then, it was brought to the

CR-3053-2021 (O&M)

notice of learned Lower Court that certain mediation proceedings were pending before Hon'ble Supreme Court and case was adjourned for intimating the court, relating to the pendency of the proceedings before Hon'ble Supreme Court. However, it was submitted by learned counsel for the respondent that there was no such proceeding, pending before Hon'ble Supreme Court. Copies of the orders passed on each date by the Court below, have also been annexed with the said report.

After filing of the report, the subsequent orders passed by the Court below have been annexed with the application i.e. CM-6488-CII-2023.

Perusal of the same reveals that the issues in the present case were framed on 30.09.2022 i.e. during the pendency of the present petition, which was filed on 01.10.2021. On 30.09.2022, the case was adjourned further to 25.11.2022, for evidence of the present petitioner. On 25.11.2022 the case was adjourned to 25.01.2023, as no PW was present on the said date. On 25.01.2023, again no PW was present and the case was adjourned for 01.03.2023. Perusal of the order dated 01.03.2023 reveals that no PW was present and in fact, last opportunity was ordered and the case was adjourned further for 31.03.2023.

Today, on query by the Court, it was disclosed that on 31.03.2023, no witness was recorded by the petitioner and the case was adjourned to 14.07.2023.

Thus, from the seriatim of the aforesaid orders, it is evident that even though, the petition has been filed for seeking expeditious disposal of the case, but however, the petitioner himself is not making any effort for

CR-3053-2021 (O&M)

recording of his evidence. Though, as per provisions of Section 21-B of the Hindu Marriage Act, it is expected and desired of the Court below to expeditiously conduct the trial, but however, as narrated aforesaid, it is the petitioner, who is not producing any evidence and effective orders have been passed by the court below, *vis-a-vis* grant of last opportunity as well as imposition of costs, to ensure about the production of the evidence by the petitioner. Despite the same, it has not been so done by the petitioner.

In the given circumstances, it cannot be concluded that there was lapse on the part of the Court concerned, in not conducting the proceedings. Any slow process going on for conducting of the proceedings, after framing of issues, is solely on account of the petitioner not recording the evidence. In the given circumstances, no time bound direction, as such, can be given to the Court below, to conduct the proceedings. But anyhow, considering the provision of Section 21-B of Hindu Marriage Act, the Court below is expected and desired to conduct the proceedings expeditiously by granting short adjournments to make out for the delay, which has already occurred. In the eventuality of either party, making an attempt to evade the process, the Court below shall take any stern action, in accordance with law, to secure conducting of further proceedings in the case.

In view of the aforesaid observations, the instant revision petition is hereby dismissed.

Even, in the proceedings, which has been decided, CM-6506-CII-2022, is pending adjudication. The said application was filed by the respondent/wife, for seeking modification of the order dated 25.02.2022 *vis-a-vis*, the custody of the autistic child, born to the parties to the lis.

CR-3053-2021 (O&M)

For the proper appraisal of this issue, the order dated 25.02.2022, passed by Coordinate Bench is reproduced, in verbatim herein:-

“XXX XXX XXX XXX

Parties have joined the proceedings in person along with their respective counsels.

With the able assistance of learned counsels and after the parties have held certain deliberations in the course of hearing, at this stage de hors the merits of the case, it has been decided by mutual consent that in the better interest and welfare of the child, they will make an earnest attempt to have rotational custody of the child. It has thus been decided that to begin with, father/petitioner shall restore the custody of child with the mother/respondent on or before 10.03.2022, for a period of six months. And, so as to continue special upbringing of the child, without disruption, since being special child, he needs help of trained staff and is currently being looked after by one Mr. Kalu Lama and Ms. Shanti Lama, both of them shall also accompany the child and stay with him for a period of 15 days until he gets acclimatized in the new environment under the parental care of his mother. Expenses of the said domestic staff and the child, including travel, stay and wages, shall be borne by the petitioner father.

Post it on 10.03.2022.

Though this Court is being held on the next date of hearing through physical mode but the parties to join the proceedings through video conferencing in person.

In the parting, this Court appreciates the positive outlook of both the parents in the better interest and welfare of the child to have kept their personal differences aside, given that there is cantankerous litigation going on between the two for a long time.”

CR-3053-2021 (O&M)

Perusal of this order reveals that it was decided by the mutual consent between the parties, keeping in view the better interest and welfare of the child that they will make earnest attempt to have rotational custody of the child. The tone and tenor of this order reveals about the temporary arrangement during the pendency of the petition to have been made by the Court, to work upon the option of rotational custody of the child.

No doubt, during the pendency of the revision petition, the aforesaid order was being complied with and attention has also been drawn by learned counsel for the petitioner/husband about the custody of the child having been handed over to the respondent again, but however, as already observed aforesaid, it was arrangement made by the Court to work upon the option of rotational custody and once the final revision petition is disposed of, this order, as such, also goes. However, prior to the passing of the order dated 25.02.2022, the custody of the child earlier was with the father of the child, namely, Harsh Madhok, as per agreement/settlement reached between the parties in Mediation and Conciliation Centre of this Court, which was reduced in writing, copy whereof is Annexure P-6. As per the same, the permanent custody of the child was handed over to the father on 09.02.2018 and it was continuing so till the order dated 25.02.2022 was passed by this Court.

Since the order dated 25.02.2022 was temporary arrangement made, and now inability is expressed by the mother to look after the child, who is '**special child**' and also on account of her own ailment, custody of the child shall revert back to the father, as per the settlement (Annexure P-6).

However, if any of the parties, has any grievance with regard to having

CR-3053-2021 (O&M)

custody of the child or handing over the custody of the child, petition can be filed by the party concerned before the Guardian Court. It is so observed in view of the settlement reached between the parties before Mediation and Conciliation Centre. Thus, custody of the child be handed over by the wife to the husband i.e. Harsh Madhok within a period of three weeks from today onwards.

However, these observations are circumscribed, *vis-a-vis*, the attempt made for rotational custody as stated in the order dated 25.02.2022 and it does not give any opinion regarding handing over or taking over the custody of the child, by either of the parents, for all times to come.

In view of the aforesaid fact situation, no further order is required to be passed in **CM-6506-CII-2022** and as such, the same is hereby dismissed.

Even **CM-17740-CII-2022** has been filed in the present revision petition, at the behest of the applicant/petitioner, under Section 340 Cr.P.C. for initiating criminal proceedings against the respondent, for making false statements in the affidavit filed in the application i.e. **CM-6506-CII-2022**.

Relating to the averments made in the said application, it is pertinent to mention that the respondent/wife had expressed her inability to handle the child, who is '**special child**' and on account of his being grown up child of about 14 years of age and more particularly, on account of her suffering from breast cancer.

Considering the same, the question relating to the custody of child, as per observation made in the order dated 25.02.2022, has already

CR-3053-2021 (O&M)

been disposed of and therefore, the application CM-6506-CII-2022 has not been touched on the merits of the case.

Considering the same, it is not expedient in the interest of justice, to initiate proceedings under Section 340 Cr.P.C, as now submitted by the counsel for the petitioner to wreck out personal vendetta on account of matrimonial bickering between the parties.

Accordingly, the instant revision petition as well as the applications in hand, are hereby disposed of.

25.05.2023
Sonu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No