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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.6156 of 2019 (O&M)
Date of Decision: 04.07.2023

MUKESH

.....Appellant

Vs

MAMTA

....Respondent

**CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH
HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Manjeet Singh, Advocate
for the appellant.

Mr. Ranvijay Singh Yadav, Advocate
for the respondent.

RAJ MOHAN SINGH, J. (Oral)

[1]. This is an appeal filed by the appellant against the judgment dated 30.07.2019 passed by the Principal District Judge, Family Court, Bhiwani vide which the petition under Section 13(1)(ia)(ib) of the Hindu Marriage Act, 1955 (hereinafter to be referred as the 'Act') for decree of divorce was dismissed.

[2]. The aforesaid judgment was passed in view of the fact that no evidence was led by the petitioner-Husband (appellant) despite availing several opportunities. The evidence of the appellant was closed by order of the Court on 30.07.2019 and

thereafter the Court proceeded to pass the impugned judgment dated 30.07.2019 forthwith.

[3]. Vide order dated 28.03.2023, the parties were directed to appear before Dr. Garima Sharma, Counsellor and the report of the Counsellor was asked for. In compliance of the said order the Counsellor has submitted her report.

[4]. Perusal of the report does not advance any case in favour of the appellant inasmuch as that some incriminating facts have been recorded by the Counsellor.

[5]. Keeping in view the status of this case, this Court proceeded to consider the issue on merits.

[6]. Perusal of the judgment dated 30.07.2019 would indicate that the appellant being petitioner in the petition under Section 13 of the Act was granted numerous opportunities for leading his evidence but he did not lead even a single evidence before the Family Court resulting in dismissal of his petition for want of evidence. The Court proceeded to close the evidence of the appellant vide order of even date dated 30.07.2019 and thereafter proceeded to decide the main case forthwith as per legal requirement.

[7]. On asking of the Court, learned counsel for the appellant has supplied certified copies of the interlocutory

orders passed by the Family Court from time to time.

[8]. Perusal of the order dated 30.05.2018 would indicate that the issues were framed and thereafter the case was fixed for evidence of the appellant. On the adjourned date i.e. 19.07.2018, no PW was present and payment of interim maintenance was not made. An application was filed by the respondent for stay on proceedings of the divorce case. The case was adjourned for filing reply. Perusal of the aforesaid order would also show that no stay on proceedings of the divorce case was granted. The case was adjourned for 06.09.2018. On the adjourned date also, no PW was present. Reply to the application for stay on proceedings of the divorce case was not filed. The case was adjourned to 27.09.2018 for filing reply to the said application for which last opportunity was granted to the appellant. The appellant was also directed to produce his entire evidence on the adjourned date.

[9]. On 27.09.2018 also, no PW was present. Reply to the application for stay on the divorce proceedings was filed by the present appellant but the arguments were not raised. The case was adjourned for 05.10.2018 and the appellant was also directed to produce his entire evidence on the adjourned date. On the adjourned date i.e. 05.10.2018 also, no PW was present. The arguments were not advanced on the application for stay

on proceedings of the divorce case. The case was adjourned for 15.10.2018 for consideration on the application as well as evidence of the appellant. On the adjourned date i.e. 15.10.2018 also, no PW was present. The arguments on the application for stay on proceedings of the divorce case were not advanced. This time, the case was adjourned for 01.12.2018 on the request of both the parties for consideration on the application as well as evidence of the appellant.

[10]. On 01.12.2018, no PW was present. The case was adjourned on the joint request for the same purpose for 16.01.2019. On 16.01.2019 also, no PW was present. The case was adjourned on the joint request for the same purpose. On 02.03.2019, the application for stay on the divorce proceedings was argued and the case was adjourned for 05.03.2019 for orders on that application. On 05.03.2019 the said application was dismissed by passing the following order:-

*“Present:Sh. Ashwani Chaudhary, Advocate for the petitioner.
Sh. G.R. Vashisth, Advocate for the respondent.
This order of mine shall dispose of application
filed by respondent, under Section 151 CPC for staying
divorce proceedings.*

2. *Heard.*

3. *It is contended on behalf of applicant-respondent
that present petitioner Mukesh (husband) is facing trial in a
case bearing FIR No.63 dated 10.12.2015, P.S. Women
Police Station, Bhiwani, under sections 498A, 406, 506,*

494, 493, 376(2)(n), 495/34 etc. of IPC. The validity of marriage in between the parties to this petition is to be established under criminal proceedings hence, present proceedings may be adjourned sine die till the finalization of criminal proceedings. In support of his arguments, Ld. Counsel for the applicant-respondent (wife) has placed reliance on law laid down in **M.S. Sheriff and anr. Versus State of Madras and ors., reported in AIR 1954 S.C. 397, Arvind K. Wadodkar Versus Ramdas D. Joshi, reported in (1996) 2 MHLJ 907 and Ramanand N. Ladda Vs. Kacharulal A. Ladha reported in 1998(2) MHLJ 112.**

4. On the other hand, it is contended on behalf of petitioner-husband that marriage in between the parties to the petition is a legal marriage and proceedings of the present petition under Section 13(i)(ia)(ib) of the Hindu Marriage Act are different from criminal case hence, there is no requirement of adjourning sine die present proceedings hence application may be dismissed.

5. In the present petition under Section 13(i)(ia)(ib) of the Hindu Marriage Act, petitioner (husband) claims that his marriage was solemnized with respondent on 14.07.2013 and that he was subjected to cruelty by respondent (wife). Validity of marriage is to be decided in civil proceedings. Any criminal proceedings initiated on the complaint of respondent (wife) does not debar the jurisdiction of this Court for deciding petition under section 13(i)(ia)(ib) of the Hindu Marriage Act. Findings of both cases shall be on different footings. There is no reason to adjourn sine die the proceedings of present petition hence, the application is devoid of merits hence the same is hereby dismissed.

6. Now to come up on 04.04.2019 for evidence of petitioner.

Date of order: 05.03.2019
(Raj Kumar, Stenographer Gr.I)

(Harish Gupta)
Principal District Judge
Family Court, Bhiwani
UID No.HR0138”

[11]. Evidently, there was no stay on the proceedings of the divorce case at any point of time. The appellant did not lead any evidence despite number of opportunities. Even after dismissal of the application for grant of stay on the proceedings of the divorce on 05.03.2019, the case was adjourned for 04.04.2019. On that day also, no evidence of the appellant was present and the case was adjourned for 02.05.2019 for the evidence of the appellant. On 02.05.2019 also, no evidence of the appellant was present and the case was further adjourned for the same purpose for 01.07.2019. On 01.07.2019 also, position was not different as no evidence was produced by the appellant. The case was adjourned for 30.07.2019 for evidence of the appellant subject to last opportunity, failing which the evidence of the petitioner was to be closed by order of the Court.

[12]. On 30.07.2019, no evidence was present. Since that was the last opportunity, failing which the evidence of the appellant was to be closed by order of the Court, therefore, the Court proceeded to close the evidence of the appellant and decided the case forthwith. On 30.07.2019, the appellant sought to project a case of hardship due to heart surgery of his father. In the application filed to that effect, no date of heart surgery of

father of the appellant was mentioned. Since vide order dated 01.07.2019, it was made clear that it shall be the last opportunity on 30.07.2019 for producing the evidence, failing which evidence of the petitioner (appellant) shall be closed by the Court order.

[13]. Having availed more than twelve opportunities including four opportunities even after dismissal of the application filed by the respondent for stay on the proceedings of the divorce case on 05.03.2019, the appellant could not lead even a single evidence during the entire period. The evidence of the appellant has been rightly closed and thereafter the Court was legally required to proceed with the case forthwith as per requirement of the law. Having done so, no illegality has been committed by the Family Court.

[14]. For the aforesaid reasons, the appeal is found to be totally devoid of merits and is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

(HARPREET SINGH BRAR)
JUDGE

July 4th, 2023

Atik

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No