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

**FAO-M No.141 of 2018(O&M)
Date of Decision: 31.08.2023**

Kamal Sharma

.....Appellant

Vs

Sunita Sharma

.....Respondent

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

Present:Mr. Vivek Singla, Advocate
for the appellant.

Mr. Tanveer Singh, Advocate for
Mr. Rahul Bhargava, Advocate
for the respondent.

RAJ MOHAN SINGH, J.(Oral)

[1]. The appellant-husband has preferred this appeal against the dismissal of his petition under Section 13 of the Hindu Marriage Act for grant of divorce.

[2]. Notice in the application for condonation of delay was issued on 03.05.2018 and the appellant-husband was directed to pay a sum of Rs.25,000/- to the respondent-wife towards interim litigation expenses in the shape of bank draft in the name of the respondent-wife. The aforesaid amount has not

been paid so far despite reiterating the said order on 17.07.2018 as well. On 05.05.2022, it was noticed that the mediation has failed. Both the parties are living separately since 2007. There are two children from the wedlock. The case was adjourned to 23.05.2022. The parties were also directed to be present in the Court on the next date of hearing. The appellant-husband was also directed to bring the details of his as well as his father's assets. The order was not complied with and on 23.05.2022, learned counsel for the appellant sought one more opportunity to comply with the order dated 05.05.2022. On 28.09.2022, one last opportunity was also granted subject to payment of Rs.5000/- as costs to be deposited with the High Court Legal Services Authority. Orders dated 05.05.2022 and 28.09.2022 were not complied with and ultimately, on 27.04.2023, following order was passed:-

“Order dated 05.05.2022 has not been complied with despite last opportunity, neither has cost of ₹5,000/- been deposited.

Learned counsel for the applicant/appellant prays for some more time.

In case, necessary details in terms of order dated 05.05.2022 alongwith an affidavit of the appellant is filed within the next three weeks, same be accepted subject to cost of ₹5,000/- in terms of order dated 28.09.2022 alongwith additional cost of ₹5,000/-, to be deposited with the Registry, to be paid to the respondent.

At request, adjourned to 31.08.2023.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE”

27.04.2023

Sunil

[3]. Learned counsel for the respondent submits that even order dated 27.04.2023 has not been complied with. The arrears of maintenance as granted by the trial Court also have not been cleared so far. Today, learned counsel for the appellant pleads no instructions.

[4]. Admittedly, orders dated 05.05.2022, 28.09.2022 and 27.04.2023 have not been complied with. The initial order dated 03.05.2018 has also not been complied with by paying a sum of Rs.25,000/- to the respondent-wife towards interim litigation expenses. The authority of the learned counsel for the appellant has not been terminated/determined so far.

[5]. In view of **Shri Anand Parkash Vs. Shri Bharat Bhushan Rai and another, 1982(1) RCR (Rent) 1 (Full Bench)**, in the event of non-payment of costs on the adjourned date, it is mandatory on the Court to disallow prosecution of suit or defence as the case may be. Awarding of costs to the aggrieved party has been left to the discretion of Court which is evident by the use of word 'may' in the Section 35-B CPC, but once that discretion has been exercised and costs have not

been paid on the next date of hearing, then regarding the taking of consequential action, the word 'shall' has been used. In the event of failure on the part of party to pay costs, the Court would be within its jurisdiction to disallow the prosecution of the suit or the defence as the case may be. The Court can extend the time while exercising the powers under Section 148 CPC on sufficiency of cause shown by the defaulting party.

[6]. In the instant case, there is no sufficient cause shown by the appellant for granting indulgence in terms of Section 148 CPC, rather the conduct of the appellant is exhibited to be deplorable.

[7]. In **Manohar Singh Vs. Shri D.S. Sharma and others, 2007(26) RCR (Civil) 798 (Delhi)**, it was endorsed that the plain reading of Section 35-B(1) CPC would show that the Court is only required to see whether the costs have been paid or not. If the party does not pay the costs, then only course open to the Court is to disallow the prosecution of the case or the defence as the case may be.

[8]. The appellant is not *bona fide*ly conducting the case, rather has flouted the orders passed from time to time i.e. from very inception of the case, where indulgence was granted in the application under Section 5 of the Limitation Act subject to deposit of a sum of Rs.25,000/- towards interim litigation expenses to the respondent-wife.

[9]. In view of aforesaid facts on record, no indulgence can be granted in this appeal and the same is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

(HARPREET SINGH BRAR)
JUDGE

31.08.2023

Prince

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No