

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-48106 & 48107-2023 in/and
CRR (F)-78-2015 (O&M)
Date of Decision: 11.12.2023

MANOJ SINGHAL

.....PETITIONER

Vs.

PRIYANKA SINGHAL AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Surinder Gandhi, Advocate, for the applicant-petitioner.

Mr. Mahir Sood, Advocate, for
Mr. Akram Hussain, Advocate, and
Mr. Parvez Chugh, Advocate, for the respondents.

HARPREET KAUR JEEWAN J. (ORAL)

CRM-48106-2023

By this application, the applicant-petitioner seeks permission to place on record some relevant documents as Annexures A-1 and A-2 with the accompanying petition.

The application is allowed subject to all just exceptions and the aforesaid documents are ordered to be taken on record as Annexures A-1 and A-2 with the accompanying petition. Office to tag the same at appropriate place.

CRR (F)-78-2015 (O&M)

1. The present Criminal Revision Petition has been filed under Section 401 of the Code of Criminal Procedure, 1973, (for short 'the Cr.P.C.') assailing the correctness of the judgment dated 09.03.2015 passed by the learned Family Court, Gurugram, in a petition under Section 125

Cr.P.C., whereby the following order was passed:-

XXXX XXXX XXXX XXXX

“11. In view of the foregoing discussion, the petition is allowed and it is directed that the respondent shall pay a sum of ₹40,000/- per month to petitioner No. 1 and ₹20,000/- per month to petitioner No. 2 from the date of filing of the petition, i.e. 22.07.2013. The amount qua petitioner No. 2 shall be payable only upto 30.01.2015, i.e. the date when he was handed over to the respondent. The sum of ₹2.5 Lacs already paid by the respondent shall also be adjusted in the amount due to petitioner No. 1.....”

2. Learned counsel for the petitioner *inter alia* contends that the marriage between the parties were solemnized on 12.12.2006. A male child out of the said wedlock was born on 01.01.2008. Initially, the custody of the child was with the respondent-mother but since 30.01.2015, the custody of the child is with the petitioner father.

2.1 It is further contended that the petitioner was laid off by the bank on 28.08.2017 since then he is not doing any job. However the respondent-wife is highly qualified and presently she is earning a sum of ₹25,485/- per month as salary. Whereas, the petitioner is an unemployed person. The petitioner was not granted any opportunity to cross-examine the respondent, as such, he could not shatter the affidavit filed by the respondent which led to miscarriage of justice. Resultantly, the impugned order was passed.

3. On the other hand, learned counsel for the respondent-wife submitted that the petitioner is in arrears of maintenance. He is raising false contentions that he was laid off by the bank. In fact, he has tendered

resignation to the bank (Annexure P-3) which has now been placed during the pendency of the present petition. On the basis of false affidavit, he had tried to contest the petition but the Family Court has rightly appreciated the facts.

4. A perusal of the Family Court Record (LCR) reveals that on 18.02.2014, Devender Kumar, Sales Officer of the ICICI Bank was examined as PW-1 on behalf of the respondent-wife he was cross-examined by the present petitioner. Similarly, when PW-2 Keval Krishan Verma, Legal Manager ICICI Bank was examined, an opportunity to cross-examine the said witness was given to the present petitioner. However, when on 16.07.2014, the statement of the respondent-wife Priyanka Singhal was recorded as PW-3, she tendered her affidavit and her further examination was deferred as she wanted to submit an affidavit. On 30.01.2015, the respondent-wife was recalled for further examination and she tendered into evidence her affidavit of assets and liabilities (Annexure P-7). However, at that point of time, no opportunity was granted to the present petitioner to cross-examine the respondent wife who appeared as PW-3. Without affording the said opportunity to the petitioner-husband, the respondent-wife was permitted to close her evidence, who was the petitioner before the Family Court.

5. It is also noticed that on 30.01.2015, the petitioner appeared as RW-1. He made a detailed statement on oath and also tendered into evidence his affidavit regarding assets and liabilities Ex. R-1 but no opportunity was granted to the respondent-wife to cross-examine the said witness.

6. A perusal of the pleadings of the parties indicate that there is a serious contest between the parties regarding their allegations on merits. It is the case of the petitioner-husband that he was laid off by the bank, as such, unemployed. Whereas the respondent-wife has taken a plea that she was employed prior to her marriage and had to quit her job on the asking of her husband and his family members. She has relied upon various documents Annexures P-8 to P-12 which have been taken into consideration by the Family Court while holding that he has substantial income.

7. Considering the contest between the parties, which is on factual matters, the Family Court should have granted an opportunity to both the parties to cross-examine each other when they appeared as witnesses. Since no such opportunity was granted to both the parties, as such, resulted in miscarriage of justice and the order passed by the Family Court is liable to be set aside.

8. Consequently, the present petition is allowed. The order passed by the Family Court, dated 09.03.2015, is set aside. The matter is remanded back to the Family Court for a fresh decision after affording one opportunity even to both the parties to conduct the cross-examination of PW-3 (respondent-wife) and RW-1 (petitioner-husband).

9. Keeping in view the long history of litigation and considering the fact that it is a family matter, the Family Court is directed to decide the matter within a period of three months after the receipt of the certified copy of this order.

10. Pending miscellaneous application (s), if any, shall also stand disposed of.

December 11, 2023

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Whether Speaking

Whether reportable

(HARPREET KAUR JEEWAN)

JUDGE

Yes

No