

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

131

CR-5994-2023
Date of Decision: 09.10.2023

Harish Kumar

....Petitioner

Versus

Nisha

....Respondent

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Jivesh Malik, Advocate for the petitioner.

SANJAY VASHISTH, J.(Oral)

1. Present revision petition has been filed, challenging the order dated 02.09.2023 (Annexure P-16) passed by learned Principal Judge, Family Court, Sonipat, whereby the application filed by the petitioner-husband (respondent before learned trial court) for setting aside the ex-parte order dated 01.10.2022 has been dismissed.

2. Learned counsel for the petitioner submits that vide order dated 01.10.2022, petitioner was proceeded against ex-parte by learned Principal Judge, Family Court, Sonipat, in a petition under Section 13 of the Hindu Marriage Act filed by the wife of the petitioner. Order dated 01.10.2022 is reproduced here under:

*'Present: Sh. Kamal Khatri, proxy counsel
for Sh.Ajay Garg, Advocate,*

*counsel for the petitioner.
None for respondent.*

Summons sent to respondent received back with report of refusal.

*Nobody has appeared on behalf of the respondent despite passing over the case several times in pre lunch as well as post lunch session. No further wait is justified. Consequently, the respondent is hereby proceeded against **ex-parte**.*

*Per request made by learned proxy counsel for the petitioner proceedings are now adjourned to **25.11.2022** for ex parte evidence of petitioner at own responsibility.'*

3. Learned counsel for the petitioner submits that he never received the summons in the case, because the notice was issued at the address, where the petitioner never resided (respondent before the learned trial Court). Moreover, no material proceedings have taken place except of recording the statement of one witness i.e. petitioner herself (respondent herein).

4. Learned counsel for the petitioner further submits that he is ready to appear and join the proceedings before the learned trial Court, if he is afforded one opportunity, even subject to the payment of some costs as per the satisfaction of this Court.

5. I have heard the learned counsel for the petitioner and perused record of the case.

6. For deciding such a petty issue, this Court does not feel need to issue notice to the respondents as the same would prolong the proceedings and burden the respondent financially.

7. Undoubtedly, order dated 02.09.2023 passed by the Family Court dismissing the application for setting-aside the *ex-parte* order dated 01.10.2022, is not on merits. However, considering the

circumstances in its totality, I deem it appropriate that appearance of petitioner and his joining the Court proceedings, would meet the ends of justice and would further help to avoid the delay in final decision on the issue in question, on its merits.

8. Consequently, impugned orders dated 01.10.2022 to the extent of petitioner being proceeded ex-parte before the trial Court and order dated 02.09.2023 dismissing the application for setting aside ex-parte order are set aside.

9. It is, however, made clear that said concession has been made available to the petitioner (respondent) subject to the appearance of petitioner on the next date fixed for trial Court and payment of total costs of **Rs.10,000/-** to be paid to the respondent-wife.

With the aforementioned terms and observations, **present revision petition stands disposed of.**

October 09, 2023
rashmi

[SANJAY VASHISTH]
JUDGE

Whether speaking/reasoned
Whether reportable?

yes/no
yes/no