

127.

2023:PHHC:163544

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

CR-7659-2023

Date of decision: 18.12.2023

Prerna Bakshi Patodia

.... Petitioner

Versus

Dhruv Patodia

.... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Sartaj Singh Gill, Advocate, for the petitioner.

GURBIR SINGH, J. (Oral)

1. Prayer in this revision petition filed under Article 227 of the Constitution of India is for setting aside the order dated 07.11.2022 (Annexure P-5) passed by learned Additional Principal Judge, Family Court, Gurugram, whereby the defence of the petitioner-wife has been struck off and the order dated 03.08.2023 (Annexure P-7) whereby her application for recalling the order dated 07.11.2022 has been dismissed.

2. Briefly stated, the respondent-husband filed a divorce petition under Section 13(1)(ia) of Hindu Marriage Act, 1955. Though the petitioner-wife appeared, but due to non-filing of written statement within the mandatory period, vide order dated 07.11.2022, her defence was struck off.

3. Learned counsel for the petitioner contends the proper opportunity has not been given to the petitioner-wife to file written statement. In fact, copy of the petition was supplied only on 29.07.2022 and

on that date, a request for filing written statement was made and the case was adjourned to 07.11.2022. However, on that date, it was wrongly mentioned in the order that Shri Manju Nath, Advocate, had appeared on behalf of the petitioner-wife and had moved an application for granting two days time, whereas she had not engaged said counsel and she is being represented by Mr. Jaskaran S. Chawla, Advocate. Petitioner filed an application dated 26.05.2023 for recalling that order, but vide order dated 03.08.2023, said application was dismissed by the learned Family Court by observing that the presence of Shri Manju Nath, Advocate had wrongly been mentioned in the order and there was no application for adjournment on behalf of the petitioner-wife. It was further held that mentioning of these facts does not entitle the petitioner-wife to have any right to file written statement as she after exhausting 90 days period and also availing last opportunity, did not chose the file written statement.

4. It is further submitted that at this stage, the petitioner-wife would be satisfied if one opportunity is granted to her for filing written statement. The next date before the Family Court is 06.02.2024.

5. Keeping in view the fact that the procedure is handmaid to the administration of justice and it is meant for advancement of justice, the petitioner should not be non-suited merely on procedural technicalities.

6. Notice of this petition is not being given to the respondent as it may linger on the case and may cause financial burden on him.

7. So, in the interest of justice, order dated 07.11.2022 (Annexure P-5) is hereby set aside and the petitioner is granted one opportunity to file written statement on the date so fixed before the learned Family Court. In

case of default, this order shall automatically stand vacated.

8. Present petition stands disposed of accordingly.

9. If the respondent-husband is not satisfied with this order, he can move an application for recalling of this order within 30 days.

(GURBIR SINGH)
JUDGE

December 18, 2023

sanjeev

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No