IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MMO No. 495 of 2024
Reserved on: 02.07.2024
Date of Decision: 11.07.2024.

Julfan ...Petitioner

Versus

Shabnam and another ...Respondents

Coram
Hon'ble Mr. Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] No

For the petitioner : Mr. Servedaman Rathore,Advocate.

Rakesh Kainthla, Judge

An application under Section 125 of Cr.P.C. for grant of maintenance allowance was filed by the respondents (applicants before the learned Trial Court). The present petitioner was a respondent, who appeared before the Court on 20.4.2023 and sought time for filing the reply. The matter was adjourned for 26.7.2023; however, the reply was not filed. The matter was adjourned for 19.8.2023 as the last opportunity. The reply was not filed on 19.08.2023. The matter was adjourned for 4.9.2023. Again, the reply was not filed and the matter was

[1] *Whether reporters of Local Papers may be allowed to see the judgment? Yes.*

adjourned for 15.9.2023 on which date an exceptional opportunity was granted subject to the payment of ₹200/-. The matter was fixed on 18.11.2023. Learned Presiding Officer was on leave on 18.11.2023 and the matter was fixed for proper orders on 17.1.2024 on which day a prayer was made for filing the reply. The learned Trial Court declined the prayer and struck off the defence.

2. Being aggrieved from the order, the respondent filed the present petition before the Court.

3. I have heard Mr. Servedaman Rathore, learned counsel for the petitioner.

4. A perusal of the record shows that the Court was more than indulgent in granting opportunities to the respondent. The respondent appeared before the Court on 20.4.2023 and the reply was not filed till 17.1.2024 despite having been granted last and exceptional opportunities.

5. However, the record further shows that when the defence was struck off on 17.1.2024, the matter was not listed for filing the reply and the matter was listed for proper order because the learned Presiding Officer was on leave on 18.11.2023.

In ***Oriental Insurance Company Vs. Om Prakash 2005 (1) Shim. Law Journal 594,*** the case was adjourned for proper orders. The summons were not issued after that and the Court conducted the hearing in the absence of the insurer. It was held by this Court that once the case was not taken up due to the absence of the Presiding Officer, it was his duty to summon the parties or at least their counsel for the next date of hearing. In the present case also, the matter was not listed for filing the reply but for the proper orders on 17.01.2024, when the defence was struck off.

6. Therefore, the learned Trial Court erred in striking off the defence when the matter was listed for proper order. The Court would have been within its jurisdiction to strike off the defence, had the matter been listed before the Court for filing of the reply.

7. Consequently, the present petition is allowed and the respondent-husband is granted one opportunity to file the reply, subject to the payment of the cost of ₹5,000/- which shall be a condition precedent for filing the reply.

8. A copy of this order be sent to the learned Trial Court for information.

9. The observations made hereinbefore shall remain confined to the disposal of the petition and will have no bearing, whatsoever, on the merits of the case.

(Rakesh Kainthla)
Judge

11th July, 2024
(Chander)