

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

106

CRR-F-108-2021(O&M)

Date of order: 04.04.2024

Bhupender @ Monu

.....Petitioner(s)

Vs.

Nisha & Another

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. D.K. Tuteja, Advocate
for the petitioner.

Nidhi Gupta, J.CRM-13976-2024

This is an application under Section 482 Cr.P.C. for recalling order dated 06.02.2024 (Annexure A1), whereby CRR-F-108-2021 was dismissed for non-prosecution by this Court.

After going through the contents of the application, which is supported by affidavit of learned counsel for the petitioner, the same is allowed subject to all just exceptions and main case i.e. CRR-F-108-2021 is restored to its original number and is taken on board today itself.

MAIN CASE

Prayer in the present petition is for setting aside judgment dated 06.03.2020 passed by learned Additional Principal Judge, Family Court, Rohtak, whereby the petitioner/husband has been directed to pay Rs.35,000/- per month to the respondents as maintenance (Rs.20,000/-

per month to respondent No.1/wife and Rs.15,000/- to respondent No.2/minor son) from the date of this order along with litigation expenses of Rs.11,000/-.

2. Learned counsel for the petitioner/husband inter alia submits that the respondents are not entitled to maintenance as the alleged marriage between the petitioner and respondent No.1 is a nullity. It is contended that on the date of alleged marriage between the petitioner and respondent No.1 i.e. on 03.04.2009, respondent No.1 had another living spouse. As such, the alleged marriage between the petitioner and respondent No.1 is a nullity.

3. It is further argued that respondent No.1 is able to maintain herself as well as her son/respondent No.2 herein as she is employed as Maths Teacher in Vishwakarma Public School, Rohtak, from where she is drawing a salary of Rs.20,000/- per month besides earning Rs.10,000/- per month by imparting tuition.

4. It is further submitted that the learned Family Court has wrongly concluded that the petitioner is earning Rs.1,50,000/- per month. The petitioner is neither running any hotel nor any perfume factory as alleged. On the contrary, due to harassment caused to the petitioner by respondent No.1, he remains mentally ill and disturbed and is not earning anything. Moreover, the petitioner has the added responsibility of his aged mother who is 100% disabled.

5. No other argument is made on behalf of the petitioner.

6. I have heard learned counsel for the petitioner and perused the case file in detail.

7. The petitioner was married to respondent No.1 on 03.04.2009. One son/respondent No.2 was born out of this wedlock who is in the care and custody of respondent No.1/wife.

8. Perusal of record of the case shows that the petitioner had filed a petition under Section 12 of the Hindu Marriage Act, 1955 for annulment of his marriage, which was dismissed by the learned Additional Principal Judge, Family Court, Rohtak vide judgment dated 30.01.2020 (Annexure P2), wherein the learned Additional Principal Judge, Family Court, Rohtak has categorically held that “...*the petitioner has no cause of action or locus standi to file and maintain this petition in its present form...*”. Learned Additional Principal Judge, Family Court, Rohtak has also found that the petitioner had filed the said petition under Section 12 of the Hindu Marriage Act, 1955 after filing of a criminal case by respondent No.1/wife against the petitioner. Accordingly, the said petition under Section 12 of the Hindu Marriage Act, 1955 filed by the petitioner was dismissed vide judgment dated 30.01.2020 (Annexure P2). As such, the argument on behalf of the petitioner that the marriage between the petitioner and respondent No.1 was a nullity, is rejected.

9. At this stage, learned counsel for the petitioner has submitted that the appeal against said judgment dated 30.01.2020 (Annexure P2) is pending before this Court.

10. As regards the next argument on behalf of the petitioner that respondent No.1 is able to maintain herself as she is employed as a Maths Teacher, the same is also liable to be rejected in view of the fact that merely because respondent No.1 is earning something does not mean that the petitioner is absolved of his responsibility to maintain the respondents. Moreover, no documentary proof was placed on record by the petitioner in support of his contention that respondent No.1 is employed as a Teacher or is earning anything by imparting tuitions. In any event, it is an admitted fact that the minor son is in the care and custody of respondent No.1/wife. As such, respondent No.1 is responsible for his day-to-day requirements whereas the petitioner has to only partially contribute financially for the maintenance of respondent No.2. It has further come on record that although there was no proof regarding the alleged income of Rs.1,50,000/- per month of the petitioner, however, his financial status and standard of living was discernible from the following documents:-

“a) certified copy of sale deed no.2554 dated 13.9.2011; whereby the respondent has purchased agricultural land measuring 31 Kanlas 19 Marlas in village Darana Tehsil Beri District Jhajjar for a total consideration of Rs. 43,94,000/-, placed on record as Exhibit P24,

b) certified copy of sale deed 209 dated 2.5.2013; whereby the respondent has purchased agricultural land measuring 10 Kanlas 7 Marlas in village Ismaila Tehsil and District Rohtak for a total consideration of Rs. 24,00,000/-, placed on record as Exhibit P25

c) certified copy of sale deed no.8463 dated 27.11.2014; whereby the respondent has purchased land measuring 1 Marla in village Badli Tehsil Bahadurgarh District Jhajjar for a total consideration of Rs. 1,56,000/-, placed on record as Exhibit P26

d) certified copy of sale deed no.3332 dated 4.1.2013; whereby the respondent has purchased agricultural land measuring 22 Kanlas 10 Marlas in village Madina Korsan District Rohtak for a total consideration of Rs. 50,65,000/-, placed on record as Exhibit P27”.

11. It has also come on record that the petitioner had also inherited landed properties after the death of his father. The respondents had also placed on record a copy of complaint (Ex.P44) filed by the petitioner under Section 138 of Negotiable Instruments Act against one Somesh Choudhary as per which the petitioner had lent an amount of Rs.55 lakh to the said Somesh Choudhary on 18.10.2014.

12. It was in this background that the learned Family Court had allowed the application of the respondents under Section 125 Cr.P.C. and granted the impugned maintenance of Rs.35,000/- per month.

13. Ld. Counsel for the petitioner has not been able to dispute or controvert the above said findings on record. As such, I find no ground is made out to interfere in the impugned judgment dated 06.03.2020 passed by learned Additional Principal Judge, Family Court, Rohtak. Present petition accordingly stands **dismissed**.

14. Pending application(s) if any also stand(s) disposed of.

04.04.2024	(Nidhi Gupta)
Sunena	Judge
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No