

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

300

CR-161-2024

Date of Decision : 30.01.2024

RUKENDER SINGH @ RUKENDER SINGH ATTREE Petitioner

Versus

PRERNA Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Naresh Kaushik, Advocate for the petitioner.

None for the respondent.

ALKA SARIN, J. (Oral)

1. Challenge in the present revision petition is to the order dated 28.11.2023 (Annexure P-1) whereby the evidence of the petitioner has been closed by the Court order and the suit itself stands dismissed under Order 17 Rule 3 CPC for want of evidence.

2. Notice of motion was issued on 12.01.2024 and dasti notice has been received back duly served. However, no one has put in appearance on behalf of the respondent despite the case having been called twice.

3. Learned counsel for the petitioner would contend that due to mis-communication between the petitioner and his counsel, evidence could not be led and that given two effective opportunities the petitioner would lead his entire evidence at his own risk and responsibility. Learned counsel has further relied upon a judgment in the case of **Prem Kishore & Ors. Vs. Brahm Prakash & Ors. [2023 Live Law (SC) 266 = 2023 SCC Online SC 356]** to contend that the power conferred on Courts under Order 17 Rule 3 CPC is to be used sparingly and only in exceptional cases.

4. Heard.

5. In the present case, notice was issued to the respondent but she has chosen not to appear despite service and accordingly she is proceeded against *ex parte*.

6. The Trial Court vide the impugned order has closed the evidence of the petitioner and on the same date also dismissed the suit under Order 17 Rule 3 CPC for want of evidence. The petitioner has filed a petition under Section 13 of the Hindu Marriage Act, 1955 and would suffer irreparable loss in case the impugned order is sustained. The petitioner has contended that he is willing to lead his entire evidence at his own risk and responsibility if granted two effective opportunities.

7. In view of above, the petition filed under Section 13 of the Hindu Marriage Act, 1955 is restored to its original number and status. The petitioner shall be granted two effective opportunities to lead his entire evidence at his own risk and responsibility subject to payment of Rs.15,000/- as costs to be paid to the respondent. The parties are directed to appear before the Family Court concerned on 16.02.2024 at 10.00 AM.

8. Disposed off. Pending application(s), if any, also stand disposed off.

30.01.2024
D.Bansal

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO