

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

126

CR-434-2024 (O&M)
Date of decision: 02.04.2024

Pardeep Kumar

...Petitioner

Versus

Anita Devi

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Raman Chawla, Advocate for the petitioner.

VIKAS SURI, J.

1. The present revision petition under Article 227 of the Constitution of India has been preferred by the petitioner-husband challenging order dated 21.12.2023 (Annexure P-4), passed by learned Principal Judge, Family Court, Bhiwani, whereby the evidence of the petitioner was closed by Court order.

2. It is pleaded that marriage of the petitioner was solemnized with respondent-wife at Village Surpura Kalan, Sub Tehsil Behal, District Bhiwani according to Hindu rites and ceremonies. Two male children namely Vikrant (aged about 09 years) and Naman (aged about 06 years) were born from the said wedlock. Both the children are studying in Adarsh Middle School, Ningana Kalan. On account of marital discord, the petitioner filed a petition under Section 13 (1)(ia) of the Hindu Marriage Act, 1955 (for short 'the Act') for a decree of divorce on 05/06.01.2022. Notice of the said petition was issued to the respondent-wife for 12.05.2022. The said petition was contested by the wife by filing written statement thereto on 03.10.2022. Thereafter, an

application under Section 24 of the Act was also filed. After framing of the issues, the petitioner led his evidence and as recorded in order dated 13.10.2023 (Annexure P-3), two witnesses namely Pardeep Kumar and Kapoor Singh were examined through Local Commissioner and the case was adjourned to 21.12.2023 for the remaining evidence of the petitioner. On the adjourned date, the petitioner changed his counsel which was permitted by the Court and fresh power of attorney was taken on record. An adjournment was sought by counsel for the petitioner who had been engaged on the same day, when the impugned order was passed and evidence of the petitioner was closed by Court order.

3. Learned counsel for the petitioner submits that the petitioner had engaged a new counsel and witnesses namely Pawan Kumar and Anand Parkash were ready with their respective affidavits and wanted to depose by way of tendering affidavits in examination in-chief. On account of the change of counsel representing the petitioner before the Family Court and request for adjournment having been declined, the aforesaid affidavits could not be furnished in evidence. While closing the evidence of the petitioner by Court order, it was observed that the petitioner had already availed many effective opportunities to conclude his entire evidence and hence the Family Court did not find any justification for further adjourning the case for the said purpose.

4. Counsel for the petitioner has pointed out that the case is now fixed for 26.02.2024 for recording the evidence of the respondent.

5. Heard learned counsel for the petitioner and with his able assistance, have perused the material available on record.

6. In view of the order proposed to be passed, the present petition is being decided without issuing notice to the respondent-wife as it may not only cause delay but also unnecessarily burden her with expenses.

7. The evidence of the petitioner has been closed by Court order without putting him to notice that a harsh order is likely to be passed for not concluding the evidence. The order dated 13.10.2023 passed prior to passing of the impugned order reads as thus:-

“Two witnesses namely Pardeep Kumar and Kapoor Singh are present and examined through Local Commissioner as per guidelines of Hon’ble High Court. No other PW is present. Further adjournment has been prayed for by the learned counsel for petitioner, which is not opposed. Now the case stands adjourned to 21.12.2023, for recording the remaining evidence of petitioner.”

8. The petitioner had changed his counsel who had sought accommodation, which was declined without assigning any reason. No doubt, the petitioner was granted opportunities to adduce evidence, which was done on the preceding hearing. There is nothing on record to show as to whether any costs were imposed upon the petitioner for not producing his evidence. The order closing evidence of a party has far reaching consequences. The Family Court should have cautioned the petitioner that in case the evidence is not produced, costs would be imposed but in the present case, the evidence has been closed by Court order without following the procedure aforesaid. While delivering justice, technicalities are not to be seen. It would not suffice the standard of reasoning that ought to have been reflected in the impugned order that the petitioner had already availed of many effective opportunities to

conclude his entire evidence. The Courts should normally pass an order of lesser gravity before passing the order closing the evidence. There can be no straight jacket formula before passing of adverse orders, however, the Court must take recourse to the powers vested in it, as are essential for achieving the ends of justice.

9. Keeping in view the above facts, this Court is of the opinion that the impugned order dated 21.12.2023 (Annexure P-4) was not justified in the facts and circumstances of the case. The petitioner would be gravely prejudiced if he is not allowed to examine his witnesses. It is settled principle that rules of procedure are handmaids of justice. Adequate opportunities/caution should have been given before passing a drastic order closing the evidence. The record also shows that before 21.12.2023, no conditional orders were passed to put the petitioner on guard that his evidence was likely to be closed by order.

10. Accordingly, the revision petition is allowed and the order dated 21.12.2023 (Annexure P-4) passed by the Principal Judge, Family Court, Bhiwani, is set aside subject to payment of costs of Rs.5000/-, to be paid to the respondent-wife. One effective opportunity shall be given by the Family Court, Bhiwani to the petitioner-husband so that he is able to conclude his evidence.

11. The revision petition is disposed of.

April 02, 2024

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(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes / No

Whether Reportable : Yes / No