

2024:PHHC:004893
**116 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-1608-2019 (O&M)
Date of decision: 15.01.2024

Sanjay Kumar

....Petitioner

Versus

Suman Devi

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Lalit Rishi, Legal Aid counsel for the petitioner

Mr. Vinod Kumar, Advocate for
Mr. Robin Lohan, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

1. The petitioner herein is the former husband of the respondent. The dispute with regard to the custody of two minor children namely Akhil Indora and Amita Indora still goes on, though the parties have not only dissolved their marriage by a decree of divorce and the petitioner after re-marriage, is blessed with a child. He filed a petition under Section 10 and 25 of the Guardian and Wards Act, 1890 for custody of Akhil Indora and Amita Indora. The petition was dismissed in default on 10.11.2017. He filed an application on 21.08.2015, for its restoration. The aforesaid application was dismissed by the Family Court vide order dated 15.11.2018 while making the following observations:-

*“Reconciliation efforts were made.
During the course of reconciliation proceedings,*

it transpired that the petitioner has performed the second marriage and from the second marriage he has also begotten a son who is aged about 4 months now. He has also stated that on 10.11.2017 he did not appear in this Court because in the execution proceedings which are now pending in the Court of Sh. Nazar Singh, Id. Principal District Judge, Family Court, Hisar the warrants were issued against him and his advocate had informed him that in case he shall not pay the maintenance amount to the respondent he shall be arrested because the police was present outside the Court. He even stated that in the Court of Sh. Nazar Singh, Id. Principal District Judge, Family Court, Hisar he had compromised the matter with the respondent on the last date of hearing and for that he had brought a cheque of 16 lakhs today but has not given that cheque to the respondent due to the fact that she has refused to withdraw the execution petition after getting the amount of Rs.6 lakhs from him. Though the present application for restoration of the petition has been filed in the petition seeking the custody of minor children yet he stated that today he had come with intention to finish the litigation with the respondent by thinking that his both children are dead till they attain the age of 18 years. He also intimated that on 10.11.2017 his place of posting was new Delhi and not Baramula. In such circumstances, the grounds mentioned in the application filed by the applicant-petitioner for seeking restoration of the petition dismissed in default on 10.11.2017 are wrong. Even otherwise, the said application is hopelessly barred by limitation and no prayer for condonation of the delay has been made. Though the applicant-petitioner has filed the present petition for seeking custody of the children yet he is stating them as dead till their attainment of age of 18 years and in view of his remarriage and child from second marriage it would not be in the interest of justice to handover the custody of the minor children who are in the custody of their mother at present. Accordingly, the application, for restoration of the petition dismissed in default on 10.11.2017, dated 18.8.2018 stands dismissed.

Papers be tagged with the main file. Main file be again consigned to record-room aller due compliance.

2. Challenging the correctness of the aforesaid order, this revision petition has been filed. Learned counsel representing the petitioner contends that the statement of the petitioner, as noticed by the court was spontaneous in the heat of the moment and he did not deliberately made such a statement.

3. This Court has considered the submissions made by the learned counsel representing the parties.

4. It is evident that both the children are residing with their mother from the very beginning. It is also evident that the petitioner has never interacted with his children from the date the decree of divorce was granted on 17.05.2014. It is nearly 10 years.

5. Keeping in view the aforesaid facts, this Court does not find it appropriate to interfere with the order passed by the Family Court.

6. Hence, dismissed.

7. All the pending miscellaneous applications, if any, are also disposed of.

15.01.2024

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE