

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

131

CR-2156-2024 (O&M)
Date of decision: 15.04.2024

Anil Maan ... Petitioner(s)

Versus

Kavita and Others ...Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ajit Singh Lamba, Advocate for the petitioner.

Mr. Prince Goyal, Advocate for respondent No.1.

ALKA SARIN, J. (ORAL)

1. Challenge in the present revision petition is to the orders dated 08.09.2023 and 03.11.2023 passed by the Trial Court whereby the petitioner herein was proceeded against *ex-parte* and his application dated 08.09.2023 Annexure P-6 for joining the proceedings has been dismissed as having been rendered infructuous.

2. The brief facts relevant to the present case are that an application was filed by the respondents (wife and children) under Section 125 Cr.P.C. for grant of maintenance. The petitioner (husband) herein was proceeded against *ex-parte* vide order dated 03.01.2022. Vide order dated 10.05.2023 the *ex-parte* proceedings were set aside subject to payment of costs of Rs.5000/-. On 08.09.2023, in the pre-lunch session, the following order was passed:

“Reply to the main petition as well as reply to the application seeking interim maintenance on behalf of

the respondent not made. The respondent appeared and sought pass over on the pretext that he will file reply after lunch. Now file be put up after lunch hours.”

3. Post lunch, the following order was passed :

“File put up after lunch hours. Case called several times since morning, but nobody has turned up on behalf of the respondent. It is already 3.45 p.m. Further wait is not justified. Hence, the respondent is hereby proceeded against exparte. Now the case stands adjourned to 03.11.2023 for exparte evidence of petitioners at own responsibility.”

4. On the same day i.e. 08.09.2023, an application was filed by the petitioner for setting aside the order dated 08.09.2023 and for joining the proceedings. The matter was adjourned to 03.11.2023. On 03.11.2023 the following order was passed:

“Petitioner made a statement that she has received a sum of Rs.5000/- of cost which was imposed vide order dated 10.05.2023 upon respondent.

Ld. Proxy counsel sought permission to file reply.

Heard. Perusal of file revealed that the respondent was proceeded exparte on last date of hearing i.e. on 08.09.2023. On the same day, application was moved in absence of petitioner and the matter was adjourned for reply to application after notice. Technically respondent

is absent for proceeding and reply cannot be taken on record in absence of petitioner. Despite, awaiting till after lunch session, respondent not turned up. Hence, the matter is adjourned proceeded ex parte against the respondent and his application dated 08.09.2023 is dismissed being infructuous.

Ld. Counsel for petitioner examined petitioner as PW-1 and tendered documents Ex.P-1 to Ex.P-7 along with affidavit of assets and liabilities etc. of petitioner.

At request, matter is adjourned to 21.12.2023 for PWs.”

5. Aggrieved by the same, the present revision petition has been filed.

6. Learned counsel for the petitioner would contend that on 03.11.2023 it has been noticed in the order that the proxy counsel for the respondent was present in Court and the costs imposed vide order dated 10.05.2023 to the tune of Rs.5000/- were received by the respondent No.1 herein. Thereafter, the Court, though the counsel was present, notices that technically the respondent was absent from the proceedings and hence the reply cannot be taken on record in his absence and the application of the petitioner herein for setting aside the order dated 08.09.2023 was dismissed as having being rendered infructuous. He would further contend that though counsel for the petitioner herein was present and costs were also paid yet reply to the application filed by the petitioner was not taken on record on the ground that technically the petitioner herein was not present and the

application dated 08.09.2023 was dismissed as having been rendered infructuous.

7. Learned counsel for respondent No.1 would contend that the matter has been pending since 2021 and the petitioner is only resorting to dilatory tactics inasmuch despite being granted sufficient time to pay the costs and to file his reply, he failed to do so. It is the further contention that application dated 08.09.2023 was moved behind the back of the respondent herein.

8. I have heard the learned counsel for the parties.

9. In the present case vide order dated 10.05.2023 the *ex-parte* proceedings were set aside subject to payment of Rs.5000/- as costs. On 08.09.2023 the matter was adjourned in the pre-lunch session to the post lunch session. It has been noticed in the order that the petitioner herein was present in person. Post lunch it has been noticed that since nobody had turned up, hence, the respondent-petitioner was proceeded against *ex-parte*. On itself 08.09.2023 an application was filed for setting aside the said order dated 08.09.2023 stating therein that the petitioner herein had gone out of station to arrange the amount and the absence was not intentional. Strangely, on 03.11.2023, though it has been noticed that the costs have been paid and received by the respondent as also the presence of the counsel for the petitioner herein has been recorded, yet it has been held that technically the respondent-petitioner herein was absent from the proceedings and hence the reply could not be taken on the record in his absence. The order itself is totally incomprehensible inasmuch as once the counsel who has been

authorized by the party was present in Court, the question of the party technically being not present would not arise. The purpose of engaging a counsel and to authorize him to appear on behalf of the party would be rendered nugatory if the party is expected to appear in person on every date. There is no requirement in law for the party to be physically present in Court for the reply to be taken on the record. Once the costs had been paid and received by the respondents there was no occasion for the Court not to have taken the reply of the petitioner herein on record and to have dismissed the application as having been rendered infructuous.

10. In view of the above the order dated 03.11.2023, not being sustainable in law, is set aside. The application filed by the petitioner herein for setting aside the order dated 08.09.2023 is allowed and the order whereby the petitioner has been proceeded *ex-parte*, is also set aside. The petitioner shall file his written statement on or before the next date of hearing before the Trial Court i.e. 14.05.2024.

11. The present revision petition stands allowed accordingly. Pending miscellaneous applications, if any, also stand disposed off.

15.04.2024
Ankur

(ALKA SARIN)
JUDGE

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