

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2688-2024 (O&M)
Decided on: 16.05.2024

TarunTalwar

...Petitioner

Versus

NishaKumari

...Respondent

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Umesh Aggarwal, Advocate
for the petitioner.

RITU TAGORE, J.(Oral)

1. Mr. Vaibhav Narang, Advocate files power of attorney on behalf of respondent, alongwith photocopies of order dated 18.04.2024, 29.02.2024 and 20.01.2024, same are taken on record, subject to just exceptions.
2. The petitioner seeks the indulgence of this Court to *set aside* order dated 19.04.2024 (Annexure P-4) passed by the Court of learned Principal Judge, Family Court, Amritsar (referred to as the ‘Family Court’); whereby an application for setting aside *ex parte* proceedings/order, filed by the petitioner in HMA case bearing No.1834/2023 titled as ‘Nisha Kumari Vs. Tarun Talwar’ has been dismissed.
3. Learned counsel for the petitioner submits that respondent filed a petition under Section 13 of Hindu Marriage Act, 1955 (referred to as the ‘Act’), seeking divorce from the petitioner on grounds of cruelty and desertion.
4. According to the submissions of learned counsel, the petitioner (respondent before the learned Family Court) appeared in person on

25.10.2023, and matter was adjourned to 16.11.2023. The petitioner engaged his counsel and he filed his power of attorney on 16.11.2023, and thereafter matter was adjourned to 18.12.2023 for filing a written statement of the petitioner. It is stated that due to some personal reasons, the counsel for the petitioner refused to appear on behalf of the petitioner. As a result, the petitioner had to engage another counsel, who filed his power of attorney on 19.12.2023. Unfortunately, the second counsel of the petitioner also failed to put in appearance on 05.01.2024 leading to *ex parte* proceedings against the petitioner. To supplement his version, learned counsel referred to the *zimini* orders dated 25.10.2023 to 02.04.2024 (Annexure P-1 colly).

5. Learned counsel next contended that on 01.04.2024, the petitioner came to attend the Court at Amritsar and inquired about his matter. There upon, he came to know that *ex parte* proceedings had been taken against him vide order dated 05.01.2024. Consequently, the petitioner engaged another counsel and moved an application (Annexure P-2) to set aside *ex parte* proceedings against him, detailing the reasons for his absence from the proceedings in the case. It is stated by learned counsel for the petitioner that respondent filed a reply and after hearing both the parties, the learned Family Court passed the impugned order dismissing the petitioner's application.

6. Learned counsel contends that the learned Family Court grossly erred in law by dismissing the application based on surmises and conjectures, and failed to appreciate the settled position of law that litigant should not suffer for inaction or omission of his counsel. The learned counsel submits that, from the record, it is explicit that the counsel for the petitioner failed to participate in the proceedings of the case for no valid reasons. It is stated that the learned Family Court failed to appreciate the

recognized principle of law that a litigant should be given an opportunity to contest his matter on merits. It is stated that impugned order is indefensible in the eyes of law and should be set aside and an opportunity be given to the petitioner to contest the case filed by the respondent against him.

7. Learned counsel for the respondent supported and defended the impugned order stating that same is factually and legally valid. Referring to the observations made by the learned Family Court, learned counsel urged that it is apparent that the petitioner was well aware of the proceedings going on in the present case. The counsel engaged by the petitioner had been appearing on behalf of the petitioner in another connected matter but purposely did not appear in the present case, and when it was nearing its conclusion, he then moved an application to set aside the *ex parte* proceedings against him. The learned counsel contends that the learned Family Court rightly appreciated the conduct of the petitioner and found his averments incorrect, and rightly rejected his request allowing him to participate in the proceedings. It is contended that there is no merit in the revision and urges for its dismissal.

8. I have heard learned counsel for the parties and gone through the paper book.

9. It is a matter of record that respondent filed a petition under Section 13 of the the Act, against the petitioner seeking divorce on grounds of desertion and cruelty. It is also a matter of record after putting initial appearance in the aforementioned suit the petitioner subsequently defaulted in his appearance and was proceeded against *ex parte*. His request to set aside *ex parte* proceedings was turned down by the learned Family Court vide the impugned order, concluding that the petitioner was well aware of

the proceedings against him and had purposely filed the application belatedly to delay the proceedings of the case .

10. According to the petitioner, his counsel did not give him a satisfactory reply regarding the proceedings going on in the suit, leading him to engage another counsel, from whom he came to know that he has been proceeded against *ex parte*. Mere engagement of a counsel by a party does not absolve him of his duty to attend the proceedings of his case. The party should be vigilant in prosecuting his case.

11. Further perusal of the impugned order indicates that petitioner was proceeded *ex parte* on 05.01.2024 and had moved an application for setting aside *ex parte* order on 02.04.2024 approximately three months thereafter. No satisfactory explanation is appearing on behalf of the petitioner for delay in moving the application to set aside *ex parte* proceedings against him. Further examination of the impugned order shows that the respondent-wife has also filed a petition under the Protection of Women from Domestic Violence Act, 2005, and both the parties to the present *lis* had attended the mediation proceedings on 20.01.2024. The learned Family Court in the impugned order, observed that on 20.01.2024, 29.02.2024 and 18.04.2024, the counsel for the petitioner attended the proceedings in Domestic Violence case on behalf of petitioner.

12. During the course of the arguments, the learned counsel for the petitioner could not point out any factual error in the facts detailed by the learned Family Court with respect to the proceedings held in the present case as well as in the Domestic Violence case. From the above factual scenario, the petitioner's claim that he was not made aware about the proceedings of the present case by his counsel cannot be countenanced. Moreover, a litigant

cannot be permitted to plead laxness on his or her part and shun due watchfulness and attentiveness in pursuing his or her case.

13. Nonetheless, it is solemn position of law that no party should ordinarily be denied an opportunity of participating in the process of justice dispensation. The counsel on behalf of the petitioner undertakes to present his written statement in one opportunity. Furthermore,delay can always be atoned for by imposing costs.

14. In circumstances to do complete justice between the parties, I believe that one effective opportunity should be afforded to the petitioner to contest his matter on merits. Accordingly, impugned order dated 19.04.2024 (Annexure P-4) is set aside, subject to payment of Rs.20,000/- as costs to be paid to the respondent, by the petitioner

15. The petitioner shall appear before learned Principal Judge, Family Court, Amritsar on due date of hearing as fixed by the learned Family Court and shall tender the costs to the respondent and shall complete his pleadings.

16. In case of default on part of the petitioner, this order shall stand automatically vacated.

17. Needless to mention, parties to the petition shall assist the Court in expeditious disposal of the case without seeking any undue adjournment(s).

18. Accordingly, revision petition is disposed of in above terms.

19. Pending applications, if any, also stands disposed of accordingly.

16.05.2024
Rimpal

(RITU TAGORE)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No