

2024:PHHC:154820-DB



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

FAO-3706-2024 (O&M)
Date of decision: 20.11.2024

Lt. Col. Sachit Mahindroo

....Appellant

Versus

Renu Bhatia

....Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Ms. Swati Katoch, Advocate,
for the appellant.

Mr. Rushil Sharma, Advocate,
for the respondent.

SUDHIR SINGH, J.

The present appeal has been filed against the order dated 01.02.2017 passed by the learned District Judge, Panchkula, whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (for brevity 'the Act') filed by the appellant-husband seeking decree of divorce, has been dismissed in default for want of prosecution.

2. The brief facts of the case are that the marriage between the parties was solemnized on 01.10.1998, according to Hindu rites at Dehradun. Out of the said wedlock, two children (a son and a daughter) were born. Later on, due to some temperamental difference, both the

parties could not reside together as husband and wife and they started staying separately since 2015. Finally, the appellant-husband filed the aforesaid petition under Section 13 of the Act before the Family Court on 15.07.2015 seeking dissolution of marriage on the ground of cruelty. The aforesaid petition was fixed for arguments on the application for amendment of divorce petition, for 01.02.2017. However, on the date fixed, none had appeared on behalf of the petitioner-husband before the Family Court. Accordingly, the petition filed by the appellant-husband was dismissed in default for want of prosecution. Thereafter, the appellant-husband filed an application (CM No.41 of 2017) for restoration of the aforesaid petition. But, the said application was also dismissed in default, vide order dated 22.03.2017, as none had appeared on behalf of the appellant-husband to pursue the said application. Consequently, on 25.04.2017, the appellant-husband moved another application (CM No.1130 of 2017) for restoration of the first application (CM No.41 of 2017). But, the second application was also dismissed in default by the Court for want of prosecution. Thereafter, on 22.05.2018, the appellant-husband filed third application (CM No.120 of 2018), which was allowed vide order dated 28.05.2018. By virtue of the said order, the second application dated 25.04.2017 (CM No.1130 of 2017) was restored. Finally,

vide order dated 26.07.2021 passed by the Family Court, the first and second applications (CM No.41 of 2017 and CM No.1130 of 2017) for restoration of the main petition under Section 13 of the Act, were dismissed.

3. Learned counsel for the appellant-husband has submitted that the appellant was an Officer in the Indian Army and he had commanded the Battalion 5682 ASC Bn. at Kalka as a CO from July 2016 to 2019. Therefore, being an Armed Forces Personnel, it was difficult for him to appear before the Court on each and every date of hearing. It is further submitted that the absence of the counsel for the appellant-husband before the Family Court on 01.02.2017 was not intentional. In fact, on the said date, the learned counsel for the appellant-husband was under the *bonafide* impression that the case was listed before the Mediation Centre, Panchkula and it was normal course that whenever the case was referred for mediation, the counsel refrained from joining the proceedings for the said purpose.

4. On the other hand, learned counsel appearing for the respondent-wife has vehemently contended that in view of the conduct of the appellant-husband in ignoring the process of Court, he is not entitled to the grant of any indulgence by this Court. It is further submitted that before the learned Family Court the divorce petition was dismissed for non-prosecution number of times and hence, merely

because the appellant happens to be an Armed Forces Personnel is no ground to grant him any further opportunity.

5. We have heard learned counsel for the parties and gone through the record.

6. It is settled law that the cases should be decided on merits instead of their dismissal on technicalities. The procedure is handmaid of Justice and, therefore, it would be in the interest of Justice if the divorce petition filed by the appellant-husband is decided on merits.

7. In view of the above, the present appeal is allowed subject to costs of Rs.5,000/- to be paid by the appellant-husband to the respondent-wife. The impugned order is set aside and the matter is remitted back to the Family Court with a direction to decide the petition under Section 13 of the Act, filed by the appellant-husband, on merits, in accordance with law.

7. All pending applications(s), if any, shall also stand disposed of.

**(SUDHIR SINGH)
JUDGE**

**(JASJIT SINGH BEDI)
JUDGE**

20.11.2024
Ajay Prasher

- *Whether speaking/reasoned:* Yes/No
- *Whether reportable:* Yes/No