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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR(F)-1042-2024 (O&M)
Date of decision: 14.08.2024

Sunil Kumar

...Petitioner

Versus

Sandhya Sharma and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sunil Kumar Rana, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. Present revision petition has been preferred against the order dated 10.07.2024 passed by learned Principal Judge, Family Court, Yamuna Nagar at Jagadhri, in case bearing No.MNT/272/2021 titled as '*Sandhya Sharma and others Vs. Sunil Kumar*', vide which defence evidence of the petitioner was closed by order of the Family Court.

2. Learned counsel for the petitioner, *inter alia*, contends that vide order dated 10.07.2024, defence of the petitioner was struck off on account of non-conclusion of his evidence despite availing seven effective opportunities. It is further contended that the petitioner came to know that respondent No.1 is



living with one Sushil Kumar and from him, she gave birth to a female child. In this regard, learned counsel for the petitioner relies upon birth certificate dated 24.04.2024 (Annexure P-3), in which father's name is written as Sushil Kumar and mother's name is Sandhya Sharma. Thereafter, on 07.06.2024, the petitioner moved an application (Annexure P-4) before learned Family Court for additional evidence of Registrar, Birth and Death, Karnal, which is very much necessary for proper adjudication of the application under Section 125 Cr.P.C. However, learned Family Court, without affording an opportunity of hearing, passed an extreme order of closing the evidence of the petitioner. As such, the petitioner seeks one last opportunity in order to conclude his evidence.

3. Having heard learned counsel for the petitioner and after perusing the record of the case with his able assistance, the present petition is being decided *in limine* in view of the directions issued by the Hon'ble Supreme Court in ***Rajnish Vs. Neha and another, (2021) 2 SCC 324***, in order to save litigation cost of the respondents and judicial time of the Court.

4. A perusal of the impugned order dated 10.07.2024 indicates that learned trial Court had categorically held that despite availing of seven effective opportunities to the petitioner, he failed to conclude his evidence. Therefore, his evidence was closed by Court order.

5. Time and again, the issue of contumacious conduct on part of the husband qua participating in the maintenance proceedings has risen before this



Court. The object and purpose behind granting maintenance under Section 125 Cr.P.C. is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of failure of marriage. At the same time, a just and careful balance must be struck to ensure that this provision does not degenerate into a weapon to punish the other spouse. However, the intention of the legislature and the efforts of the judiciary are rendered superfluous.

6. Pertinently, a two Judge Bench of the Hon'ble Supreme Court in the case of **Rajnish**'s case (*supra*) has relied upon its judgment rendered in ***Kaushalya Vs. Mukesh Jain, (2020) 17 SCC 822*** to categorically hold that the Court may proceed to strike off the defence of the respondent, if the errant spouse, in spite of being given a reasonable opportunity to participate in the trial, appears to be unjustly prolonging it. Reliance in this regard can also be placed on the judgment of this Court in ***Rani Vs. Parkash Singh, AIR 1996 P&H 175***.

7. Be that as it may, such drastic steps may only be taken as a last resort, when the Court is convinced that the errant spouse is wilfully abnegating his liability. The Court must not overlook such deliberate disobedience, as the same can be deterrent to the cause of justice and defeats the purpose of the provision granting maintenance under Section 125 Cr.P.C.

8. Adverting to the case at hand, the petitioner has undertaken to conclude his evidence. In view of the peculiar facts and circumstances of the case, this Court does not find the need to strike off defence of the petitioner.



Moreover, efforts must be made to ensure that, as far as possible, the parties involved are allowed to present the best available evidence, as that would lend credibility to the judicial proceedings.

9. Accordingly, the present petition is allowed and the impugned order dated 10.07.2024 passed by learned Principal Judge, Family Court, Yamuna Nagar at Jagadhri is hereby set aside, subject to payment of Rs.10,000/- as cost to the respondents, in order to compensate them, for the delay.

10. The petitioner is granted two effective opportunities to conclude his evidence and he undertakes not to take further adjournments.

11. In case the evidence is not concluded on two effective dates, to be fixed by learned Family Court, the impugned order dated 10.07.2024 passed by learned Principal Judge, Family Court, Yamuna Nagar at Jagadhri, will enure.

12. All the pending miscellaneous application(s), if any, shall stand disposed of.

**[HARPREET SINGH BRAR]
JUDGE**

14.08.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No