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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR-4986-2024

Date of decision : 02.09.2024

Amit Singh Yadav

... Petitioner

Versus

Priyanka

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Ms.Jyotika Behl, Advocate for
Mr.Satbir Rathore, Advocate
for the petitioner.

VIKAS BAHL, J.(ORAL)

1. This is a Civil Revision Petition filed under Article 227 of the Constitution of India for setting aside the impugned order dated 23.01.2020 (Annexure P-2) passed by the Principal District Judge, Family Court, Gurugram, whereby the defence of the petitioner has been struck off.

2. Brief facts of the present case are that the respondent (wife of the petitioner) had filed a petition under Section 13(1)(ia) (ib) of the Hindu Marriage Act 1955 for dissolution of marriage by a decree of divorce against the present petitioner on 08.05.2019. Vide order dated 23.01.2020 (Annexure P-2), the Family Court, Gurugram noticed that on the earlier date last opportunity was granted to file written statement but the same was not filed and accordingly, opportunity to file written statement was closed and the matter was adjourned to 21.04.2020 for evidence of the petitioner

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(respondent herein). It is the said order which is sought to be challenged by the petitioner, after a delay of more than 4 years and 7 months. It is also relevant to note that on 08.01.2024 (Annexure P-5) when the case was fixed for evidence of the wife of the petitioner, the present petitioner did not appear and thus, was proceeded against ex-parte and the matter was adjourned for ex-parte evidence of the wife of the petitioner (respondent herein). The said order dated 08.01.2024 was however set aside on 29.07.2024 (Annexure P-6) conditionally on a concession given by the learned counsel for the wife of the petitioner to the effect that the ex-parte proceedings be set aside subject to payment of costs and the matter was therefore adjourned to 12.08.2024. The case is now fixed for 06.09.2024 for final arguments as informed by the learned counsel for the petitioner.

3. Learned counsel for the petitioner has submitted that the petitioner had appeared on 10.10.2019 in the case and the case was adjourned to 18.12.2019 for filing written statement and on 18.12.2019, the petitioner had sought an adjournment to file written statement and the matter was adjourned to 21.01.2020 and thereafter to 23.01.2020 as being the last opportunity. It is submitted that the written statement was not filed on 23.01.2020 as the petitioner could not engage a lawyer. It is further submitted that the petition was dismissed in default on 08.01.2021 and was restored only on 05.10.2023 and keeping in view the above said two factors, the present petition be allowed and the order dated 23.01.2020 be set aside.

4. This Court has considered the arguments of learned counsel for the petitioner and finds that the same cannot be accepted. It is not in dispute

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that the divorce petition was filed by the respondent in May 2019 and the right to file the written statement stood closed vide order dated 23.01.2020 (Annexure P-2). The said order was not challenged for a period of more than 4 years and 7 months. No zimni order prior to 23.01.2020 has been annexed along with the present petition. Even in case the argument of learned counsel for the petitioner to the effect that the petitioner had appeared on 10.10.2019 and the matter was adjourned to 18.12.2019 and thereafter to 21.01.2020 and then to 23.01.2020, is taken on its face value, then also the same shows that in spite of a period of several months having been granted to the petitioner, he had not filed the written statement. Even subsequently vide order dated 08.01.2024 (Annexure P-5) the respondent was proceeded against ex-parte which order was also set aside on 29.07.2024 on the concession made by learned counsel for the respondent (wife of the petitioner). The same clearly shows that the petitioner is only wanting to delay the proceeding initiated by the respondent (wife of the petitioner). Even on the aspect of the divorce petition having been dismissed in default on 08.01.2021, it would be relevant to note that a perusal of the order dated 05.10.2023 would show that the application for restoration of the petition under Section 13 of the Hindu Marriage Act was filed by the respondent (wife of the petitioner) on 20.08.2021 and it has been recorded in the order dated 05.10.2023, that the present petitioner had not filed reply to the said application in spite of repeated opportunities including two last opportunities and on account of the said fact, the matter was further adjourned and it was only on 05.10.2023, that the matter was



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restored. The said conduct also shows that the present petitioner wants to delay the matter in every which way.

5. Keeping in view the above said facts and circumstances, this Court is of the opinion that the order dated 23.01.2020 (Annexure P-2) has been rightly passed and the said order deserves to be upheld and the present petition being meritless deserves to be dismissed and is accordingly dismissed.

(VIKAS BAHL)
JUDGE

September 02, 2024.

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No