



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

FAO-5755-2023 (O&M)

Date of decision: November 22, 2024

Krishan Kumar

....Appellant

versus

Sunita Devi

....Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE ALOK JAIN**

Present:- Mr. Mohit Rathee, Advocate for the appellant.

SUDHIR SINGH, J. (ORAL)

CM-20370-CII-2024

The instant application has been filed for preponing the date of hearing from 20.03.2025 to that of today.

For the reasons given in application, the same is allowed and the date of hearing is pre-poned and the main case is taken up on Board for final disposal today itself.

CM-19643-CII-2023

For the reasons given in the application, the same is allowed and delay of 46 days in filing the appeal is condoned, subject to all just exceptions.

Main case (O&M)

Challenge in the present appeal is to the order dated 11.07.2023 passed by learned Principal District Judge, Family Court, Bhiwani (for short the 'Family Court'), whereby, the petition under Section 11 of the Hindu Marriage Act, 1955 (for short 'the Act') filed by the appellant seeking the marriage to be declared as null and void, was dismissed under Order XVII Rule III CPC.

2. The appellant had filed the aforesaid petition, *inter-alia*, averring therein that his marriage with the respondent was solemnized on 12.05.2017 as per Hindu rites and out of the said wedlock, a male child was born on 18.08.2018. It was further alleged that the respondent-wife and her family members had concealed from the appellant the factum of her earlier marriage and not obtaining divorce from her previous husband.

3. Vide the impugned order dated 11.07.2023, the evidence of the appellant was closed and the divorce petition was dismissed under Order XVII Rule III of CPC.

4. Learned counsel for the appellant has submitted that on 27.09.2022, the issues were framed by the learned Family Court and the case was fixed for 18.11.2022 for the evidence of the appellant. It is further submitted that owing to COVID-19 pandemic, the appellant could not appear and examine the witnesses. Even on 11.07.2023, the appellant changed his counsel before the learned Family Court. The learned counsel for the appellant prays that one last opportunity may be granted to the appellant to appear and adduce evidence.

5. As noticed above, the learned Family Court has dismissed the petition filed by the appellant vide impugned order dated 11.07.2023.

The said order reads as under:-

“Fresh power of attorney on behalf of petitioner has been filed.

No PW is present. Payment of maintenance pendente lite and litigation expenses not made. Further adjournment has again been prayed for by the learned counsel for the petitioner, which is strongly opposed. A perusal of the case file reveals that in this case, issues were framed vide order dated 27.09.2022 and the petitioner was directed for adducing his evidence in this case. Since thereafter, four effective opportunities including last opportunity have been granted to the petitioner for adducing his evidence in this case, but neither the petitioner has appeared nor he has examined even a single witness on his behalf.

Perusal of the case file reveals that the petitioner has filed the instant petition under Section 11 of the Hindu Marriage Act, 1955, whereby seeking null and void marriage between parties to the petition. Since the petitioner despite availing four effective opportunities has failed to examine even a single witness on his behalf in order to prove his case, therefore, this Court is left with no option but to close the evidence of the petitioner.

In view of the facts and circumstances of the case, as narrated above, the evidence of the petitioner, thus, stands closed by the orders of the Court and the present petition, accordingly, stands dismissed under Order 17 Rule 3 C.P.C. for want of evidence on behalf of the petitioner. After due compliance, file be consigned to the record-room.”

6. We have heard the learned counsel for the appellant and have also gone through the impugned order.
7. A perusal of the impugned order reveals that since the date of framing of issues i.e., 27.09.2022, four effective opportunities, including last opportunity, were granted to the appellant to adduce his evidence. However, neither the appellant appeared before the learned Family Court nor did he examine any of his witnesses. Thus, we do not find any illegality in the impugned order, which may warrant any interference by this Court.
8. Hence, the present appeal is dismissed.
9. Pending application(s), if any, shall stand disposed of.

(SUDHIR SINGH)
JUDGE

(ALOK JAIN)
JUDGE

November 22, 2024
mahavir

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