



CRR(F)-1673-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-23151-2024 in/&
CRR(F)-1673-2023 (O&M)

Date of decision: 27.05.2024

Ashish

...Petitioner

V/s

Savita and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Akhil Saini, Advocate for the petitioner.

None for the respondents.

SUMEET GOEL, J.

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1. Present application has been preferred by the applicant-petitioner praying for striking off/deleting para No.8 from the main criminal revision petition. The said paragraph as stated in para No.8 of the main revision petition reads as under:

“8. That it is pertinent to mention here that, Sh. Rajesh Gupta, Principal Judge, Family Court, Rohtak may be a prompt and upright Judicial Officer, but conducting the proceedings in a cavalier manner and has a propensity to skip the meaningful stages. That the act, conduct and omission of Sh. Rajesh Gupta, Principal Judge, Family Court, Rohtak not only struck off the defence of Petitioner but also violates the Right of Natural Justice significantly 'Audi alteram partem' means to hear the other party, or no one should be condemned unheard”

2. Learned counsel for the applicant-petitioner has argued that pleading(s) made in paragraph No.8 of the main revision petition has been

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made on account of inadvertence & hence the application in hand has been preferred for deleting/striking off the same.

3. Keeping in view the entirety of the facts and circumstances of the case as also the specific prayer made in the application in hand which is supported by affidavit of the applicant-petitioner, the instant application is allowed and para No.8 of the main revision petition deserves to be deleted.

4. Ordered accordingly.

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5. The instant revision petition has been preferred for setting-aside the order dated 18.09.2023 passed by learned Principal Judge, Family Court, Rohtak (hereinafter to be referred as the “concerned Family Court”) vide which right of the petitioner (herein) to file reply to the main petition, application for interim maintenance as also the affidavit of declaration of assets and liabilities was closed.

6. Notice of motion was issued on 04.03.2024 for 18.03.2024. Office report indicated that summons issued to respondents had been received back served. However, none has caused appearance on behalf of the respondents on 18.03.2024. Same was the position on 24.05.2024 wherein arguments advanced by the learned counsel for the petitioner were heard and thereafter judgment was reserved.

7. Learned counsel for the petitioner has argued that, vide impugned order dated 18.09.2023 passed by the concerned Family Court, the defence of the petitioner (herein) came to be effectively closed as his right to file reply to the main petition for grant of maintenance, reply to the application for interim maintenance as also his right to file affidavit of declaration of assets and liabilities was closed. It has been further argued



that vide order dated 06.07.2023, the ex-parte order earlier passed against the petitioner (herein) was set-aside and he was permitted to file reply to the main petition, reply to the application for interim maintenance as also his affidavit of declaration of assets and liabilities & it was on the next date of hearing itself i.e. 18.09.2023 that the right of the petitioner (herein) to file above said pleadings was closed. Learned counsel has further argued that the impugned order has been passed without affording sufficient time to the petitioner (herein) to submit his pleading(s) which has caused grave prejudice to him as adjudication of his valuable right is involved in the *lis* pending before the said family Court.

8. I have heard learned counsel for the petitioner and have perused the available record.

9. Indubitably, the petitioner (herein) has not been pursuing his case diligently. This factum is clearly decipherable from the fact that the petitioner (herein) had initially entered appearance before the concerned Family Court on 01.06.2022 whereinafter he was proceeded against ex-parte vide order dated 10.08.2022. Thereafter, the petitioner (herein) had filed an application for setting-aside of the ex-parte order/proceedings which came to be allowed on 06.07.2023. However, the fact remains that after the setting-aside of ex-parte order/proceedings on 06.07.2023, the petitioner (herein) was permitted only one opportunity to file requisite pleadings and affidavit whereinafter the said right was foreclosed vide the impugned order.

10. It is settled principle of natural justice that no proceedings are to be undertaken against any person without affording him an opportunity of being heard. It goes without saying that such an opportunity should be



sufficient and effective opportunity so as to be satiating the anvil of cardinal principle of “*audi alteram partem*”. An age old adage reads thus:

“I have heard it observed by a very learned man,” says he, “that even God himself did not pass sentence upon Adam before he was called upon to make his defence. ‘Adam,’ says God, ‘where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldst not eat?’ And the same question was put to Eve also.” In a case in 1850 (Abhey v. Dale) this passage was cited in his judgment by the late Mr. Justice Maule.”

11. Since the valuable rights of the petitioner (herein) are involved as the main petition including the interim application, pending before the concerned Family Court, pertains to adjudication on the question of maintenance amount which is being claimed by the wife and child of the petitioner from him; this Court deems it appropriate, in the interest of justice, to grant one effective opportunity to the petitioner in the entirety of facts and circumstances of the case.

Decision

12. The impugned order dated 18.09.2023 is set-aside & the Principle Judge, Family Court, Rohtak is directed to provide one effective opportunity to the petitioner (herein) to file reply to the main petition, reply to the application for interim maintenance as also his affidavit of declaration of assets and liabilities. This shall, however, be subject to the payment of Rs.5,000/- as costs which shall be paid by the petitioner (herein) to the respondent-(herein)-wife before the said family Court. Needless to say that payment of these costs shall be a condition precedent for availing one effective opportunity as granted to the petitioner (herein) by way of the present petition.



- 13. There is no gainsaying that nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.
- 14. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

May 27, 2024
Ajay

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