



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

125

CRR(F)-1473-2024 (O&M)

Date of Decision: 21.11.2024

Rashid

.... Petitioner

Versus

Rabsana and another

.... Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Kunal Dawar, Advocate with
Ms. Shruti Mandhotra, Advocate for
for the petitioner.

NIDHI GUPTA, J. (ORAL)

Challenge in the present revision petition is to orders dated 17.08.2024 and 11.10.2024 whereby the learned Principal Judge, Family Court, Faridabad has proceeded against the petitioner in an *ex parte* manner solely for non-payment of provisional/interim arrangement of maintenance so awarded.

Learned counsel for the petitioner submits that vide the impugned order dated 11.10.2024, the petitioner has been proceeded against *ex parte* on the ground that the petitioner had failed to make the payment of Rs.30,000/- granted to the respondents by way of “interim arrangement of maintenance” alongwith costs of Rs.2,000/- by the learned Family Court vide order dated 17.08.2024.

Learned counsel submits that vide order dated 17.08.2024, the petitioner had been directed to make payment of Rs.30,000/- to the respondent No.1 “.....as pure interim arrangement of maintenance on the



next date of hearing, failing which the respondent/applicant shall be treated as ex parte only and no option would be given to him to contest this case.”

Learned counsel contends that there is no provision as per law for ‘*interim arrangement*’. It is submitted that there was even no prayer in this behalf by the respondents. As such, such an order could not have been passed. It therefore follows, that the petitioner could not have been proceeded against *ex parte* vide order dated 11.10.2024 for non-compliance of order dated 17.08.2024. It is accordingly prayed that the orders dated 17.08.2024 and 11.10.2024 be set aside; and the petitioner be granted one opportunity to appear before the learned Family Court, subject to payment of reasonable cost.

No other argument has been raised on behalf of the petitioner.

I have heard learned counsel for the petitioner as also perused the case file in great detail.

Perusal of the record of the case shows that the petitioner was married to the respondent No.1 on 23.03.2014. One son was born out of their wedlock. The minor child, who is presently 5 years of age, is in the custody of the respondent-wife. Due to matrimonial discord, the parties are living separately since 18.10.2019. The present petition under Section 125 Cr.P.C. was filed by the wife and the minor son on 31.03.2022. The petitioner is stated to be a Building Contractor; whereas the respondent-wife is not doing any job as she has to take care of the minor child, and they are dependent upon her parents.

It has been contended on the part of the petitioner that the order dated 17.08.2024 is illegal as there is no provision in law for granting “*interim arrangement of maintenance*”. It has been further contended that



interim maintenance can be granted only on an application filed by the dependent wife. Accordingly, prayer has been made for setting aside order dated 17.08.2024 whereby petitioner had been directed to pay Rs.30,000/- to the respondent as 'interim arrangement'; and subsequent order dated 11.10.2024 vide which the petitioner has been proceeded against *ex parte* as the order dated 17.08.2024 had not been complied with.

Upon perusal of the case file, I am not inclined to entertain the prayer made by the petitioner as the arguments made on behalf of the petitioner are misleading. The record bears out that after filing of the present petition under Section 125 Cr.P.C. on 31.03.2022, pursuant to service, the petitioner had put in appearance before the learned Family Court on 05.09.2022. However, thereafter, as the petitioner had failed to appear, he was firstly proceeded against *ex parte* vide order dated 03.12.2022. Subsequently, the petitioner had filed an application on 23.01.2024 for setting aside the *ex parte* order dated 03.12.2022. While considering the said application dated 23.01.2024, the learned Family Court had directed the petitioner/husband vide impugned order dated 17.8.2024 "*to pay an amount of Rs.30,000/- to the petitioner (petitioner no.1 being his wife and petitioner no.2 being his son) as pure interim arrangement of maintenance on the next date of hearing, failing which the respondent/applicant shall be treated as exparte only and no option would be given to him to contest this case.*"

However, admittedly the petitioner failed to comply with the said direction dated 17.08.2024. As such, vide order dated 11.10.2024, the petitioner was again proceeded against *ex parte*. In order dated 11.10.2024, it has been duly recorded that "*as the respondent has failed to comply with the order dated 17.08.2024 qua making payment of interim arrangement of*



maintenance to the petitioner, which was condition precedent for setting aside ex parte order dated 03.12.2022. Therefore, respondent shall be hereby treated as ex parte only.” It has also been noted in the order dated 11.10.2024 that the aforesaid precedent of payment of Rs.32,000/- for setting aside *ex parte* order was imposed upon the petitioner while considering the entire factual matrix and his conduct which was “*aimed solely at prolonging the proceedings of this case of maintenance.*”

I am in agreement with the aforesaid observations of the learned Family Court. The record amply bears out that the petitioner has attempted to delay the proceedings. Admittedly, petition under Section 125 Cr.P.C. was filed on 31.03.2022; in which the petitioner had first put in appearance before the Family Court on 5.9.2022; where after he was *ex parte* vide order dated 3.12.2022; for setting aside which he had filed application only on 23.1.2024; in which lenient view was taken by the learned Family Court and he was allowed to join the proceedings subject to payment of ₹32,000/-. Thus, the respondent and the minor child could be granted no interim maintenance for over two years due to the dilatory tactics employed by the petitioner.

However keeping in view the entire facts and circumstances of the case and in the interest of justice, the impugned order dated 11.10.2024 whereby petitioner has been proceeded against *ex parte*, is set aside; however, subject to the condition that the petitioner shall make payment of Rs.1 lac as costs to the respondent within 2 weeks from today. It is made clear that in case of default by the petitioner in depositing the said costs within the stipulated time, the present petition shall be deemed to be dismissed.

Compliance report from the learned Family Court, be called for 10.12.2024.



Disposed of, in above terms.

Pending application, if any, stands disposed of.

21.11.2024
Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No