

CRM-M-30986-2024
Date of decision: 12.08.2024

...PETITIONER

NISHA BAWEJA

...RESPONDENT

Present: Mr. Ashish Gupta, Advocate
for the petitioner.

Prayer in the present petition filed under Section 482 Cr.P.C. is for quashing of order dated 25.08.2022 (Annexure P-2), whereby, the defence of the petitioner has been struck off and order dated 28.04.2023 (Annexure P-5), whereby, the application for recalling/review of the order dated 25.08.2022 has been dismissed in case bearing No.MNT/274/2021 titled as '*Ms Nisha Baweja vs. Ankush Bhalla*' both passed by learned Addl. Principal Judge, Family Court, Gurugram.

2. Learned counsel for the petitioner *inter alia* contends that vide order dated 25.08.2022, the defence of the petitioner was struck off on account of non-filing of reply. Thereafter, the petitioner approached the concerned Court for recalling of the said order, however, learned Court below has refused to modify the order and dismissed the application filed by the petitioner on 28.04.2023 (Annexure P-5). It is further contended that petitioner is facing three cases, pending before District Courts, Gurugram i.e. the petition under Domestic Violence Act, the divorce petition and a maintenance petition under Section 125 Cr.P.C. All these cases were filed by the respondent. The replies in



all these cases were to be filed by the petitioner, which were prepared and the income certificate was obtained. In two cases, except the maintenance proceedings under Section 125 Cr.P.C., replies have already been filed. The reply in the present case could not be filed as the petitioner has to arrange certain documents, in order to file his affidavit in terms of the guidelines issued by the Hon'ble Supreme Court in the case of ***Rajnesh v. Neha and another (2021) 2 SCC 324***. As such, delay in filing the reply has occurred however, the petitioner has duly filed his affidavit declaring his assets and income before the Family Court. In the meantime, mother of the petitioner became unwell and there was no other person to look after her, therefore, the petitioner has to rush back from the Court in order to get her mother treated and the reply to be filed in this case, could not be signed, however, the same was ready and replies in all three cases have similar pleadings. The petitioner has also annexed the prescription slip of the treatment of his mother with his application, however, the learned Court has not considered the same and extreme order of striking of the defence has been passed. The petitioner was not able to file his reply due to the aforementioned *bona fide* reasons and he holds the Majesty of the Court in high esteem and has not made any wilful default. Learned counsel seeks one last opportunity in order to furnish his reply in the present proceedings.

3. Having heard learned counsel for the petitioner and after perusing the record 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 ***Rajnesh's*** case (*supra*), in order to save litigation cost of the respondent and judicial time of the Court.

4. A perusal of order dated 25.08.2022 (Annexure P-2) indicates that the learned trial Court had categorically held that despite so many opportunities



granted to the petitioner, he has failed to file reply. Therefore, his defence was struck off.

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 ***Rajnesh*** (*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 file the reply. In view of the peculiar facts and circumstances of the case, this Court does not find the need to strike of 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 disposed of in the following terms:
- i. In case the petitioner files his reply within a period of 04 weeks, his right to lead defence evidence shall remain intact, subject to payment of Rs. 5,000/- to the respondent as cost, in view of the agony caused to her due to unwarranted delay.
 - ii. In case the petitioner fails to file his reply in the stipulated time, as undertaken by him, the impugned order dated 25.08.2022 (Annexure P-2) passed by learned Additional Principal Judge, Family Court, Gurgram, shall enure.
10. Pending miscellaneous application(s), if any, shall also stand disposed of.

August 12, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |