



231 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR(F)-1849-2023

Date of decision: 24.09.2024

KAMAL @ KAMAL PRAKASH

...PETITIONER

V/S

ANJU

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Divyam Singh, Advocate for
Mr. Ashish Gupta, Advocate for the petitioner.
Mr. Arun Sharma, Advocate for the respondent.

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition has been filed seeking modification of order dated 23.08.2023 passed by learned Principal Judge, Family Court, Ferozepur Jhirka, vide which, the application under Order 9 Rule 13 read with Section 151 CPC has been dismissed qua, *ex parte* order dated 16.03.2022 as well as *ex parte* judgment dated 06.04.2022.

2. Brief facts of the case are that upon a matrimonial dispute between the couple on account of demand of dowry, respondent-wife filed a petition under Section 125 Cr.P.C. seeking maintenance. In the said petition, on 16.03.2022, no one had appeared on behalf of the petitioner and he was proceeded against *ex parte*. Thereafter, an *ex parte* judgment dated 06.04.2022 against the petitioner was passed. When the petitioner came to know about the same, he filed an application under Order 9 Rule 13 read with Section 151 CPC for setting aside the *ex parte* order dated 16.03.2022 and judgment dated 06.04.2022 before learned Family Court, Ferozepur Jhirka, which was also dismissed. Aggrieved by the same, the petitioner approached this Court by filing the present petition.

3. Learned counsel for the petitioner *inter alia* contends that vide



impugned order dated 23.08.2023, the application filed by the petitioner under Order 9 Rule 13 read with Section 151 CPC for setting aside the *ex parte* order dated 16.03.2022 and *ex parte* judgment dated 06.04.2022 has been dismissed and petitioner has been burdened with an amount of Rs.7,500/- per month as maintenance to be payable to respondent-wife. Learned Family Court has passed the impugned judgment dated 06.04.2022 without following the drill of the guidelines issued by the Apex Court in ***Rajnish v. Neha and another'*** **(2021) 2 SCC 324**, especially with regard to the filing of affidavits of assets and liabilities and admittedly, the respondent-wife has not filed her affidavit declaring her assets and liabilities. Learned counsel further relies upon Annexure P-5 i.e. the service report and tracking report of the postal department and submits that in the report, the name of the petitioner/receiver is at serial No.7 and it is indicated that the recipient is residing outside without address. As such, the petitioner was never served and *ex parte* order dated 16.03.2022 has been wrongly passed.

4. *Per contra*, learned counsel for the respondent submits that once the petitioner was proceeded against *ex parte*, then the learned Court below has rightly passed the impugned judgment, however, he could not controvert the fact that before passing the impugned judgment dated 06.04.2022, the respondent has not filed her affidavit declaring her assets and liabilities.

5. Having heard learned counsel for the parties and after perusing the record with their able assistance, the present petition is taken up for final disposal.

6. While dealing with the issue of maintenance *in extenso*, a two Judge bench of the Hon'ble Supreme Court in ***Rajnish v. Neha and another***



(supra), laid down the criteria for determining quantum of maintenance and issued the following directions:

“VI Final Directions

xxx....xxx....xxx

132. The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of this judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the concerned Family Court / District Court / Magistrates Court, as the case may be, throughout the country."

7. In view of the discussion above, the impugned order dated 23.08.2023, *ex parte* order dated 16.03.2022 and judgment dated 06.04.2022 are hereby set aside and the matter is remanded back to learned Principal Judge, Family Court, Ferozepur Jhirka. The learned Court below is directed to decide the matter afresh, after taking into consideration the affidavits of the parties qua their assets and liabilities, strictly in accordance with law laid down by the Hon’ble Supreme Court in **Rajnish v. Neha and another** (supra).

8. Needless to say that vide order dated 05.01.2024, an amount of Rs.1,00,000/- was directed to be deposited in the account of respondent-wife, the same shall be adjusted at the time of re-assessment of maintenance in lieu of this order. Learned Family Court is further directed to decide the matter expeditiously.

9. The present petition stands disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

September 24, 2024
manisha

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