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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of Decision: 05.05.2025

Ranjeev Kumar

...Petitioner

Versus

Simi Nanda and another

...Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present:-. Mr. Gurmohan Singh Bedi, Advocate
for the petitioner

Mr. Vivek Salathia, Advocate
for the respondents

KIRTI SINGH, J.(Oral)

1. Prayer in the present petition filed under Section 482 Cr.P.C. is for quashing of impugned order dated 17.11.2020 (Annexure P-11) passed by learned Principal Judge, Family Court, Gurdaspur whereby the defence of the petitioner has been struck off.

2. The facts in brief are that the respondents had filed petition under Section 125 Cr.P.C. seeking Rs. 50,000/- as maintenance with averments that on 18.10.2015, the marriage of respondent No.1 was performed with petitioner as per Hindu rites and ceremonies and out of this wed-lock, respondent No.2 was born. After marriage, matrimonial disputes ensued between the parties which led to irretrievable break down of marriage. Thereafter, the respondents filed petition under Section 125 of Cr.P.C. for granting of maintenance along with an application for ad-interim maintenance against petitioner before learned trial Court. The



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application for granting ad-interim maintenance was allowed by learned trial Court and the petitioner was directed to pay Rs. 20,000/- per month to respondent No. 1 and Rs. 10,000/- per month to respondent No. 2 as interim maintenance w.e.f. 08.01.2020 vide order dated 22.10.2020.

3. Learned counsel for the petitioner submits that the said order dated 22.10.2020 was challenged by the petitioner before this Court vide CRR(F) No. 393-2020 in which notice has been issued and payment of maintenance beyond Rs. 20,000/- was stayed. He further submits that learned Family Court on an application moved by the respondents for enforcement of order dated 22.10.2020, issued conditional warrants of arrest of the petitioner. It has further been contended that despite the order of maintenance having been challenged before this Court and by also disregarding the fact that the petitioner was ready and willing to pay the amount determined by the Court in installments, learned Family Court vide impugned order dated 17.11.2020 passed a direction striking off the defence of the petitioner with a further direction to proceed ex-parte against the petitioner in the event of non-payment of part payment of maintenance amount. Learned counsel for the petitioner contends that to show his bonafide the petitioner deposited Rs. 40,000/- towards interim maintenance, which was duly noted and thus the conditional warrants of arrest so issued against the petitioner were recalled vide order dated 24.11.2020. He further submits that learned Family Court has proceeded to issue warrants of arrest even before the first date of payment fixed by itself and then ordered to strike off the defence of petitioner, which is not sustainable in law. It is also argued that learned Family Court without considering the facts and circumstances of the case passed the impugned order and the defence of the petitioner was wrongly struck off.



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4. I have heard learned counsel for the petitioner and perused the record.
5. The Hon'ble Apex Court, in "**Rajnish vs. Neha and Another**", 2021 (2) SCC 224, while discussing the catena of judgments on Enforcement of Orders of Maintenance, observed that the order of maintenance may be enforced by a decree of a Civil Court. However, it was further observed that striking off the defence of the respondent is an order which ought to be passed in the last resort, if the Court finds the default to be willful and contumacious. The following observations were made by the Hon'ble Apex Court:-

“ xx xx xx xx

Discussion and Directions on Enforcement of Orders of Maintenance 127. The order or decree of maintenance may be enforced like a decree of a civil court, through the provisions which are available for enforcing a money decree, including civil detention, attachment of property, etc. as provided by various provisions of the CPC, more particularly Sections 51, 55, 58, 60 read with Order 21. 128. Striking off the defence of the respondent is an order which ought to be passed in the last resort, if the Courts find default to be wilful and contumacious, particularly to a dependant unemployed wife, and minor children. 129. Contempt proceedings for wilful disobedience may be initiated before the appropriate Court.

xx xx xx xx”

6. The judgment of the Hon'ble Supreme Court in **Rajnish (supra)**, clearly establishes that the course of striking out the defence, as employed by the Family Court, should not be adopted casually and in a routine manner. Rather, the

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said course is to be adopted as a measure of last resort. The Family Court in the present case passed the orders striking out the defence of the petitioner without taking into account that the petitioner to show his bonafide had paid a substantial amount of the arrears which was duly accepted by the respondents and after which conditional warrants were issued against him were withdrawn. The fact that the maintenance so awarded had been challenged and was pending adjudication before this Court was also not considered. The Family Court overlooked a fundamental principle of jurisprudence that the right to plead a defence against any allegations so levelled, being not only a cherished legal right but a principle of natural justice, ought not to be meddled with lightly, without there being willful and contumacious neglect on the part of, that person qua compliance of the order(s) passed by the Court. In these circumstances the Family Court ought to have afforded a reasonable opportunity to the husband to clear the entire arrears of interim maintenance so accumulated, instead of striking his defence as the initial resort. Surprisingly, vide order dated 24.11.2020, on payment of Rs. 40,000/- by the petitioner, the Court ordered the recall of the conditional warrants issued against the petitioner.

7. As such the order passed by the Family Court, curtailing the right of the husband to present his defence in the petition filed for maintenance, without affording reasonable opportunity and also exploring other possibilities, is not just, giving the legal position qua the same as also the facts of the case.

8. In view of above discussions, order dated 17.11.2020 passed by the Principal Judge (Family Court), Gurdaspur is set aside.

9. The matter is remitted back to the Family Court, Gurdaspur for its adjudication afresh, by affording the petitioner reasonable to present his defence,



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which shall be done, subject to his clearing the entire arrears of interim maintenance as fixed by the Family Court. The petitioner shall also be liable to pay the cost of Rs. 10,000/- to the respondents. The parties are directed to appear before the Family Court, Gurdaspur, either in person or through their counsel on the next date of hearing before it.

Pending application(s), if any, also stands disposed of accordingly.

05.05.2025
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(KIRTI SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No