



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

**CM-6042-CII-2025 in/and
FAO-5496-2023
Date of Decision:02.04.2025**

DHARM WATIAppellant
Versus
ANIL KUMARRespondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI**

Argued by: Ms. Apoorva Arya, Advocate for the applicant/appellant.

Mr. Lupil Gupta, Advocate for the respondent.

SURESHWAR THAKUR, J.

CM-6042-CII-2025

1. By way of present application, the applicant/appellant is seeking preponement of the date of hearing of the main case i.e. FAO-5496-2023 from 09.04.2025 to some early date.

2. For good and valid reasons mentioned in the application, the same is allowed. The hearing of the main case, is preponed from 09.04.2025 to today itself.

FAO-5496-2023

1. The present appellant was arrayed as a respondent in Hindu Marriage Petition bearing No.HMA/1127/2020.

2. Though the present appellant, as unfolded by an order passed on 18.01.2023 by learned Principal Judge, Family Court Gurugram, order whereof becomes extracted hereinafer, had caused an appearance before the learned Principal Judge, Family Court, Gurugram, but since despite some opportunities becoming afforded to her to file a written statement to the supra petition, yet upon their remaining unavailed, thereupon, the learned Principal Judge of the



FAO-5496-2023

[2]

Family Court, Gurugram, proceeded to strike off the respondent's defence. Consequently, the petition was listed on 25.04.2023 for the evidence of the petitioner.

“Written statement not filed. Still an adjournment is requested. Perusal of the record reflects that respondent in this case appeared on 04.10.2021, despite that till date respondent has not filed written statement. It seems that respondent is not interested in filing written statement. Therefore, defence of respondent is struck off. Now, the case is adjourned to 25.4.2023 for evidence of the petitioner.”

3. The above extracted order brought grievance to the present appellant, and, resulted in hers filing an application for setting aside the said *ex parte* order dated 18.01.2023. The said application became dismissed through an order dated 10.08.2023, becoming rendered by the learned Principal Judge of the Family Court, Gurugram. The operative part of the said order becomes extracted hereinafter:-

“Keeping in view the above facts no case is made out to give opportunity to the respondent to file written statement and to set aside ex parte order dated 18.01.2023, therefore, the application filed by the applicant-respondent stands dismissed.”

4. It appears that the learned Trial Judge concerned, misconstrued, that the order rendered on 18.01.2023, was an order whereby the respondent was proceeded against *ex parte*. The reason for making the said inference becomes grooved in the factum, but as evident from a reading of the supra extracted order passed, on 18.01.2023, qua the present appellant (respondent in the Hindu Marriage Petition) rather regularly appearing before the learned trial Judge concerned, but only for want of hers availing the opportunities to file written statement to the Hindu Marriage Petition, that her defence



FAO-5496-2023

[3]

was struck off. Therefore, the order rendered on 18.01.2023, was not an order whereby the respondent was proceeded against *ex parte*, nor thereby an application under Section 9 Rule 13 of CPC, was maintainable, nor any jurisdiction was to be assumed thereons i.e. over the relevant application, thus, by the learned Trial Judge concerned.

5. It appears that the said misconstruction of the order rendered on 18.01.2023, did ultimately lead the learned Trial Judge concerned, to assume jurisdiction over the application.

6. The assumption of jurisdiction over the application claiming relief for setting aside an order rendered on 18.01.2023, is an ill assumed jurisdiction, besides suffers from a gross illegality, as also becomes ingrained with the vice of material impropriety. Moreover, the said order has been passed despite no jurisdiction for rendering the same ever vesting in the learned Trial Judge. The reason for stating so, becomes further generated from the fact, that the order rendered on 18.01.2023, was revisable through a petition cast, under Article 227 of the Constitution of India read with Section 115 of the CPC, becoming instituted before this Court. Therefore, the impugned order dated 10.08.2023, is quashed and set aside.

7. Nonetheless, in the larger interest of justice, if yet the present appellant is led to avail the remedy of filing a revision against the order rendered on 18.01.2023, thereupon, substantial justice would not be done to the present appellant, especially when the challenge made to the said order is through the present FAO, becoming filed in the year 2023, thus, if there is any further prolongation in any decision to be made in the revision petition to be preferred by the present



FAO-5496-2023

[4]

appellant, thereupon, the agony wreaked upon the present appellant, would become unnecessarily aggravated.

8. As such, in the larger interest of justice, after quashing the impugned order dated 10.08.2023, this Court also directs the learned Trial Judge concerned, to grant one opportunity to the present appellant, to institute a written statement to the Hindu Marriage Petition supra.

9. However, the said opportunity be availed on a date, but not beyond one month from today becoming granted to the present appellant by the learned Trial Judge concerned.

10. Disposed of accordingly alongwith all pending application(s), if any.

(SURESHWAR THAKUR)
JUDGE

(VIKAS SURI)
JUDGE

02.04.2025
Anjal

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