



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-6674-2024(O&M)

Date of Decision: May 07, 2025

Brij Bala (Geet)

...Petitioner

Versus

Rahul

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Dinesh Mahajan, Advocate
for the petitioner.

Mr.Vipin Mahajan, Advocate
for the respondent.

ARCHANA PURI, J.

The petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India, thereby, making a prayer for setting aside of the order dated 27.09.2024 (Annexure P-8) passed by learned trial Court, whereby, an application filed by the petitioner-wife to reject the 3rd divorce petition filed by respondent-husband, was dismissed.

In pursuance of the notice issued, respondent made appearance through counsel.

The essential facts, to be noticed, are as follows:-

Undisputedly, marriage between the parties to the lis, had taken place on 28.10.2012, but no child was born from the said wedlock. Also, it is

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evident that initially, respondent-husband had filed a divorce petition and on the basis of the alleged compromise, after the affixation of maintenance, the said divorce petition was withdrawn on 03.09.2016. Even, the revision petition filed to assail the order of maintenance was also withdrawn. However, the compromise did not materialize and the parties returned back on the same day, to their respective homes. Also, it is evident from the pending petition that respondent-husband had filed second divorce petition and therein also, maintenance was fixed, but however, the same was also dismissed in default, vide order dated 11.12.2018. It was, thereafter, the 3rd divorce petition for seeking divorce was filed, copy whereof is Annexure P-1.

During the pendency of the said divorce petition, the petitioner-wife (who is respondent before trial Court) had filed an application for seeking rejection of the 3rd divorce petition, which was allegedly filed on same/similar grounds, as earlier taken by the respondent-husband (petitioner before learned trial Court).

Reply was filed and after hearing learned counsel for the parties, the said application was dismissed by learned trial Court.

Being aggrieved, the petitioner-wife has filed the present revision petition.

Learned counsel for the parties heard.

As already observed aforesaid, it is not disputed between the parties that three divorce petitions have been filed. 1st divorce petition bearing No.HMA-850-2015 was filed, wherein, allegedly, a compromise

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was effected and the said petition was withdrawn on 03.09.2016. However, it is evident from the contents of the pending divorce petition as well as from the contents of the rejection application filed, at the instance of the petitioner-wife, that during the pendency of 1st divorce petition, the Court had ordered the payment of Rs.10,000/- per month as maintenance pendente lite to the petitioner-wife, from the date of filing of the application. Thereupon, revision petition was filed to assail the order dated 06.02.2016. However, the matter was referred to the Mediation Centre and compromise was effected on 26.07.2016 and the revision petition was withdrawn on 03.09.2016.

Also, from the paperbook, it is evident that 2nd divorce petition bearing No.HMA-79-2018, on the same grounds was also filed. Therein also, an application under Section 24 of the Hindu Marriage Act was filed and vide order dated 02.11.2018, an amount of Rs.11,000/- per month was fixed as maintenance pendente lite and the husband was also directed to pay Rs.10,000/- towards litigation expenses. The copy of the order passed by learned trial Court, on the application under Section 24 of the Hindu Marriage Act is Annexure P-5.

Perusal of the same reveals that vide same order i.e. 02.11.2018, apart from fixation of maintenance pendente lite and litigation expenses, issues were framed and the case was adjourned for 07.12.2018 for evidence of the husband (who was petitioner before trial Court) and payment of maintenance pendente lite, was also ordered to be made on the date fixed. Subsequently, on 11.12.2018, none had made appearance on behalf of the

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husband, though, wife had made appearance in-person. Considering the same, learned trial Court passed following order, which is reproduced in verbatim, as herein given:-

“Today none has appeared in the court on behalf of the petitioner Rahul despite of repeated calls given to the case and also to the petitioner nor any payment of maintenance pendente lite has been made to respondent. It is already 3.59 PM. Case is called once again. But neither the petitioner nor his counsel has turned up in the court. The petitioner does not appear to be interested to proceed further with the present petition, and as such, the same is ordered to be dismissed in default under order 9 Rule 8 CPC. File be consigned to record room.”

From the perusal of the aforesaid order, it is evident that the same was dismissed in default under Order 9 Rule 8 CPC. Without seeking restoration/setting aside of the order of dismissal of the divorce petition, the respondent-husband had filed 3rd petition for seeking divorce, which is pending between the parties at present. It is significant to note that on the date fixed before the trial Court, when the order of dismissal was passed, the wife had made appearance in-person, but however, the husband, who had filed the divorce petition, had not made appearance. In the given circumstances, as per Order 9 Rule 9 CPC, default on the part of plaintiff, as such bars the fresh suit. He could have sought setting aside of the order of dismissal. It was not so done.

Perusal of the 2nd and 3rd petitions for seeking divorce filed at the instance of the respondent, reveals that those were filed on same or

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similar grounds, which were taken earlier by the respondent-husband. Also, from the paperbook, it is evident that the respondent had failed to pay the arrears of maintenance and litigation expenses affixed by the trial Court. Rather, he had withdrawn the 1st divorce petition, on the pretext of compromise, which had not fructify and both the parties, on the same day, had proceeded to their respective homes. Likewise, in the second petition for divorce filed by the husband, when the maintenance was fixed, he did not make appearance and ultimately, the Court concerned was restrained to dismiss in default the same, while marking presence of the wife. Thus, it is evident that respondent had failed to make payment of the maintenance as ordered by learned trial Court, from time to time.

Though, now it is submitted by learned counsel for the respondent that it was, on account of ill-health of his mother that he could not make appearance and the divorce petition was dismissed in default. May it be so, this can, at the maximum, be a ground to seek setting aside of the order of dismissal of second divorce petition. In any manner, no fresh cause of action accrue on this basis. Close perusal of the contents of the 2nd and 3rd divorce petitions, coming on record, reveals that it is on the similar allegations, that the 3rd petition for divorce has been filed.

Considering the same, more particularly, when the wife had made appearance, the filing of the 3rd petition for seeking divorce is clearly barred, under Order 9 Rule 9 CPC and the respondent-husband, as such, cannot be permitted to blow hot and cold, in the same breath and cannot be permitted to take advantage of his own wrong. No cause of action accrues to

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the respondent to file 3rd divorce petition.

Hence, the impugned order dated 27.09.2024 is erroneous, which warrants interference by this Court and the same is set aside. Consequently, the application filed by the petitioner-wife for rejection of the 3rd divorce petition filed by the respondent-husband, is accepted.

In view of the aforesaid observations, the revision petition is hereby allowed.

May 07, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No