

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM (M) 652/2010

Date of Decision: May 13, 2010

SATINDER SINGH Petitioner
Through: Mr. Hari Shankar, Advocate.

versus

BHUPINDER KAUR Respondent
Through: None.

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**CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH**

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| (1) | Whether reporters of local paper may be allowed to see the judgment? | |
| (2) | To be referred to the reporter or not? | Yes |
| (3) | Whether the judgment should be reported in the Digest ? | Yes |

J U D G M E N T

ARUNA SURESH, J. (Oral)

CM (M) 652/2010 and CM APPL No.8932/2010

1. A divorce petition was filed by the Respondent wife under Section 13 (1) (ia) of the Hindu Marriage Act (hereinafter referred to as 'Act') which was dismissed on 30th April, 2009. Thereafter, Respondent filed another petition under Section 13 (2) (iii) of the Act. Petitioner husband failed to pay

maintenance awarded to the Respondent wife in proceedings under Section 125 Cr.P.C. He also failed to produce his evidence on different dates granted by the Court without cost and on 2nd March, 2009 with cost of Rs.1,000/-. When Petitioner husband failed to produce his evidence, the Trial Court closed his evidence.

2. On 2.3.2009, Petitioner filed an application under Order 18 Rule 17 CPC and another application under Section 151 CPC for recalling the order dated 2.3.2009. However, the said application was dismissed as not pressed.
3. Again on 5.4.2010, Petitioner filed two applications; one under Section 151 CPC and another under Order 16 Rule 1 (3) and 14 read with Section 151 CPC. Application under Section 151 CPC was dismissed on 5.4.2010 itself.
4. Vide impugned order dated 27.4.2010, application of the Petitioner under Order 16 Rule 1 (3) and Order 14 read with Section 151 CPC was dismissed.
5. Aggrieved by the said order of the Trial Court, Petitioner has

preferred this petition under Article 227 of the Constitution of India.

6. By way of this petition, petitioner has sought permission of the Court to examine witnesses including Bailiff, who was allegedly present at the time when the warrants for attachment issued by the Metropolitan Magistrate for recovery of arrears of maintenance were sought to be executed by the Respondent wife on 3.3.2009. He has alleged that at the time of attachment, Shri Gurbachan Singh, father of the Respondent in the presence of the Bailiff and other witnesses named in the application had stated that Respondent had re-married in the year 2004. According to the Petitioner, he came to know about the factum of re-marriage of the Respondent only on the said date i.e. 3.3.2009 and therefore he could not place on record the names of the said witnesses at the relevant time. He sought examination of these witnesses to prove that Respondent is re-married having a child and therefore she cannot be allowed to take advantage of her own wrong. It is also the case of the Petitioner that the Metropolitan Magistrate has already directed the Respondent to be medically examined

in order to confirm the birth of the child.

7. After hearing the counsel for the parties, the Court analyzed the facts and circumstances of the case vis-à-vis Sections 13 and 13 (2) (ii) of the Act and Order 16 and 14 CPC and dismissed the application with following observations:-

“7.1 In view of admitted facts, the respondent’s plea that the petitioner had remarried in the year 2004, has no bearing in the present petition. If at all, the respondent could have taken appropriate steps in the petitioner’s petition u/s. 125 CrPc. Even if for a while, keeping in mind, the provisions of Section 23 of H.M. Act, respondent’s allegation is considered for a while, still the witnesses sought to be produced by the respondent are of no help. These witnesses allegedly heard petitioner’s father saying that the petitioner has remarried. The same does not in any manner prove factum of second marriage of petitioner. Thus, summoning of witnesses as prayed for, is hardly of any assistance in this regard and is not called for.

7.2 It would also not be out of place to note here that the respondent had not been diligent in leading his evidence. Petitioner had closed her evidence on 12.12.08 and the matter was adjourned for respondent/applicant’s evidence to 02.02.2009. The respondent did not lead any evidence on the said date i.e. 02.02.09 as a result, the Ld. Predecessor court granted last opportunity to the respondent to lead his entire evidence on 02.03.2009, subject to the cost of

Rs.1,000/-. The respondent did not lead any evidence even on 02.03.09. Rather, he did not appear on the said date. In view of which respondent's evidence was closed and the matter was adjourned for final arguments on 12.03.09. The respondent subsequently moved an application under order 18 Rule 17 CPC and another application u/s 151 CPC for recalling of order dt.02.03.2009. The respondent's counsel on 01.05.09 stated that the respondent does not press his application under order 18 Rule 17 CPC. The same was dismissed as not pressed. Case was adjourned to 23.5.09 on which date respondent moved another application under order 7 Rule 11 CPC. The matter was then adjourned to different dates for disposal of the said applications. Respondent's application u/o 7 Rule 11 CPC was disposed of as dismissed by Ld. Predecessor vide court order dt. 13.11.09 and respondent's application u/s. 151 CPC was fixed for disposal for 07.12.09 but as respondent's counsel did not advance arguments, another opportunity was given to him subject to cost and the matter was adjourned to 07.01.2010. Ld. Predecessor court vide order dt. 07.01.2010 allowed respondent's application, allowing him to lead evidence subject to cost making it clear that no further opportunity shall be granted to him and adjourned the matter to 29.01.10. On 29.01.10, Ld. Predecessor court was on leave and case was adjourned to 22.02.10. On 22.02.2010 the matter was assigned to the Family Court, pursuant to abolition of the Ld. Predecessor court. In view of the same, matter was adjourned for R.E. to 05.04.2010. On 05.04.2010 on first call neither the respondent nor his counsel appeared. Respondent's brother appeared and requested for awaiting the matter. On the second call instead of leading his evidence, the respondent filed two applications

– (i) U/s 151 CPC and (ii) the present application under 16 Rule 1(3) and 14 R/w section 151 CPC. His application u/s 151 CPC was dismissed on the same day and the second application was fixed for disposal for today.

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7.3. It is also significant to note that as per respondent himself the fact of alleged second marriage was revealed to the respondent on 03.03.09 but he did not move any application soon thereafter or even subsequently. The respondent has been moving one application after the other but has chosen to file the present application after lapse of more than one year.

In view of the above, this application has apparently been filed with the sole intention of delaying the proceedings.

8.0 For the above reasons, the application is dismissed with cost of Rs.500/-.”

8. The Trial Court, in my view, rightly observed that the witnesses sought to be examined by the Petitioner husband are not relevant for the simple reason that they are all hear-say witnesses and none of these persons actually witnessed the alleged second marriage of the Respondent wife. It is the Petitioner whose conduct is questionable as he failed to produce his evidence despite repeated opportunities granted

to him. Instead of leading his evidence, he continued to file one application or the other with no fruitful results. Even after coming to know about the alleged second marriage of the Respondent on 03.03.2009, Petitioner kept silent for more than a year and then filed an application under order 16 and 14 CPC. Why he kept quite for a period of more than one year is not known? The Trial Court had closed his evidence on 2.3.2009. Immediately after coming to know of the alleged marriage of the Respondent, Petitioner could have moved an appropriate application without any delay for permission to lead evidence which came to his notice after the evidence was closed. It seems that Petitioner husband did not care to examine himself as his own witness despite opportunities granted.

9. None of these witnesses named in the application and were allegedly present at the time of execution of warrant of attachment when father of Respondent allegedly stated that Respondent had re-married, to my mind, are relevant for proper and final disposal of the case on merits. There is no dispute that hear-say evidence is not admissible. Bailiff is an

officer of the Court, who had gone for execution of the warrants for attachment to the house of the Petitioner. Therefore, naturally, he could not be considered as a relevant and competent witness to dispose of about the alleged second marriage of the Respondent

10. Hence, I do not find any inherent defect in the order of the Trial Court, which needs any interference from this Court in exercise of its supervisory power under Article 227 of the Constitution. Hence, petition is dismissed.

**ARUNA SURESH
(JUDGE)**

**MAY 13, 2010
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