

Court No. - 4

Case :- MATTERS UNDER ARTICLE 227 No. - 11557 of 2023

Petitioner :- Smt. Deep Mala

Respondent :- Devesh Kumar Sharma

Counsel for Petitioner :- Madan Kumar Tiwari

Hon'ble Prakash Padia,J.

1. The petitioner has preferred the present petition with the prayer to set aside the order dated 07.08.2023 & 27.07.2023 passed by the Principal Judge Family Court Kanpur Nagar in Case No.2544 of 2018 (Devesh Kumar Sharma Vs. Deep Mala Sharma).

2. Facts in brief as contained in the petition are that proceedings have been initiated by the husband namely Devesh Kumar under Section 13 of the Hindu Marriage Act which was registered as Case No.2544 of 2018 (Devesh Kumar Sharma Vs. Deep Mala Sharma). In the aforesaid case an application was filed by the petitioner under Section 24 of the Hindu Marriage Act for grant of Advocate fee and traveling fees to pursue the case. On the said application, after hearing counsel for the parties, direction was issued by the Court below on 09.12.2019 to pay Rs.10,000/- to pursue the case and Rs.3000/- for traveling on each date.

3. During the pendency of aforesaid case, the respondent approached this Court by filing petition being Matters Under Article 227 No.4787 of 2023 which was disposed of vide order dated 28.04.2023 with the direction to the Court below to decide the matter expeditiously. The aforesaid order is reproduced hereinbelow:-

"Heard learned counsel for plaintiff-petitioner and perused the record.

The basic relief sought by the petitioner in the present petition filed under Article 227 of the Constitution of India is to direct the Additional Principal Judge, Family Court, Room No.II, Kanpur Nagar to decide the proceeding of Case No.2544 of 2018 (Devesh Kumar Sharma Vs. Deep Mala Sharma) expeditiously.

It is argued by learned counsel for the petitioner that as per the provisions contained

under Section 21-B of the Hindu Marriage Act, 1955, the trial under this Act shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date of service of notice of the petition on the respondent. Learned counsel for petitioner has relied upon the sub-section (2) of Section 21-B of the Hindu Marriage Act. Sub-Section (2) of Section 21-B of Hindu Marriage Act, 1955 is quoted as under:-

"(2) Every petition under this Act shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date of service of notice of the petition on the respondent."

In this view of the matter, it is argued that the court below is duty bound to consider the aforesaid case expeditiously as per the provisions contained under Section 21-B (2) which is quoted as above.

Having regard to the facts and circumstances of the case and the submission made by learned counsel for the petitioner, but without prejudice to the merits of the case, the instant petition is finally disposed of with a direction to the court below to make every endeavour to decide the aforesaid case expeditiously, without granting any unnecessary adjournments to either of the parties, if there is no other legal impediment."

4. In the meanwhile, another application being Application No.40 was filed by the petitioner to enhance the amount of traveling expenses and the aforesaid application was partly allowed by the Court below enhancing the traveling expenses from Rs.3000/- to Rs.3500/-.

5. It is argued by learned counsel for the petitioner that in the aforesaid case, the date was fixed for hearing on 23.05.2023 and on the said date, the petitioner was not present in the Court though an application was filed by her counsel to adjourn the matter. In this view of the matter, the matter was adjourned and the next date fixed was 27.07.2023. On 27.07.2023 since the petitioner was not present, in view of the order dated 28.04.2023 which is quoted above, the opportunity to produce the evidence has been closed and the order dated 15.09.2022 by which the traveling expenses was enhanced was recalled. Aggrieved against the aforesaid, a recall application was filed by the petitioner stating therein that on 27.07.2023, i.e., the last date fixed in the matter, train of the petitioner was late by two hours, therefore, she could not reach the Court on time and she reached the Court at 12 noon and when she inquired about her case, the order has already been passed in the matter by the Court below, hence a prayer has been made to recall the aforesaid order. It is

argued that the Court below rejected the application vide order dated 07.08.2023 giving the reasons that a direction has already been given by this Court to decide the matter expeditiously.

6. Heard learned counsel for the petitioner and perused the record.

7. From perusal of the order, by which the order of enhancement of traveling expenses was recalled, is a non-speaking and passed without giving any cogent reason.

8. In view of the above discussion, the order dated 07.08.2023 is hereby recalled.

9. The Court below is directed to pass fresh order on the recall application within a period of three weeks from today.

10. The Court below is also directed to decide the Case No.2544 of 2018 (Devesh Kumar Sharma Vs. Deep Mala Sharma) most expeditiously and preferably within a period of four months from today.

11. The Registrar Compliance is directed to communicate a copy of this order to Principal Judge Family Court Kanpur Nagar through District Judge Kanpur Nagar by Tuesday, i.e., on 21.11.2023.

Order Date :- 16.11.2023
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