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

+ **FAO 300/2016**

RAM CHANDER SHARMA Appellant

Through: **Mr. Udayan Jain & Ms. Anju
Thomas, Advocates**

Versus

CHANDRA MOHINI Respondent

Through: **Nemo**

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

% **30.09.2016**

C.M. 36509/2016 (for exemption)

Allowed subject to all just exceptions.

**REV.PET.445/2016 & C.M. 36509/2016 (to bring on record
additional documents)**

In a suit under Order 33 of CPC for recovery of marriage expenses and maintenance under Section 20 of *The Hindu Adoption and Maintenance Act, 1956*, appellant was the defendant who had chosen not to contest the said suit which was decreed *ex parte*. Later, by way of an application under Order 9 Rule 13 of CPC, appellant had sought setting aside of the *ex parte* order which stood declined by the trial court. In the appeal, impugned order was assailed on the ground that appellant was erroneously proceeded *ex parte*, although he was not served. The appeal

preferred before this Court was dismissed vide judgment of 12th August, 2016 while noting that appellant was served for 28th January, 2009 by speed post and the speed post receipt of 22nd January, 2009 on record was relied upon. While dismissing appellant's appeal, it was noted that Mr. Gaurav Malik, Advocate, had appeared on behalf of appellant before the trial court on 26th February, 2009 and so, the inference of service upon appellant was fully justified.

Now, review of judgment of 12th August, 2016 is sought on the ground that presumption of service for 28th January, 2009 is an error apparent on the face of it because on the said date, fresh notices were issued. It is pointed out that appellant was not proceeded *ex parte* on 28th January, 2009, but was set *ex parte* on 22nd April, 2009 without satisfying as to whether appellant was properly served and no report of the process server was obtained, which is required as per *Delhi High Court Rules*. It is submitted that the presence of Mr. Gaurav Malik, Advocate, in the order-sheet of 26th February, 2009 does not disclose if he appears on behalf of appellant-defendant and as to who is the main counsel and that appellant had not appointed Mr. Gaurav Malik, Advocate to appear on his behalf and no *vakalatnama/power of attorney* was filed on his behalf.

The additional facts put forth are that appellant had never resided at the address where he was purportedly served by speed post. Another additional fact put forth is that in rent proceedings, decree has been passed in favour of appellant, which discloses the address where appellant resides and in view thereof, service upon appellant at the address given in the petition under *the Hindu Adoption and Maintenance*

Act, 1956 cannot be taken to be the correct address of appellant. Lastly, it was submitted that the fact of appellant residing at a different address than the one given in the petition for maintenance and adoption was known to the mother of respondent, who had appeared as a witness against appellant.

Upon hearing and on perusal of the judgment of 12th August, 2016 rendered by this Court, I find that the present review petition is infact an appeal in the garb of a review. Such a view is being taken because the submissions now advanced were not there in the appeal and the additional facts now sought to be relied upon by way of a separate application were already to the notice of appellant when the appeal was filed. Such a view is being taken because it is not said in the application seeking to place on record additional facts that the additional facts were subsequently discovered. In such a situation, application seeking to place on record additional facts deserves to be outrightly dismissed and is accordingly dismissed.

Since the judgment of 12th August, 2016 does not suffer from any error apparent on the face of record and the submissions now advanced in the review petition are infact by way of challenge to the aforesaid judgment, which cannot be made to the same Court which has rendered the judgment of 12th August, 2016, therefore, submissions now advanced are not required to be gone into in this review petition. Suffice to say that even if so called additional facts are taken into consideration, still the fate of the appeal would not have been any different. Since this court is not

under any obligation to justify its judgment of 12th August, 2016, therefore review petition is dismissed.

Review petition and the application are accordingly disposed of.

(SUNIL GAUR)
JUDGE

SEPTEMBER 30, 2016

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