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

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Date of Decision: August 16, 2016

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MAT.APP.(F.C.) 104/2016

RITA SOLANKI

..... Appellant

Represented by: Mr.Dhanmohan, Advocate with
Ms.Tanu B.Mishra, Advocate.

versus

JAI SOLANKI

..... Respondent

Represented by: Mr.Naresh Chandra Sharma,
Advocate .

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J. (Oral)

CM No.27912/2016

1. For the reasons stated in the application 19 days' delay in filing the appeal is condoned.
2. Application is disposed of.

CM No.27911/2016

Allowed subject to all just exceptions.

MAT.APP.(F.C.) 104/2016

1. The appellant/wife is aggrieved by the common order dated June 06, 2016 whereby the learned Principal Judge, Family Court (NW), Rohini, Delhi has dismissed the three applications filed by her on three different dates of hearing.
2. A divorce petition was filed by the respondent/husband for dissolution

of marriage on account of cruelty being committed by the appellant/wife.

3. The evidence by both the parties stands closed and the matter is now listed for final arguments. At that stage the appellant/wife filed three applications: (i) application filed on May 26, 2016 to recall PW-1 Jai Solanki (respondent/husband) for further cross examination; (ii) application filed on May 30, 2016 under Order VIII Rule 1A(3) CPC to lead additional evidence; and (iii) application filed on June 06, 2016 to recall PW-2 Ishwar Singh for cross examination.

4. The learned Principal Judge, Family Court while dealing with the three applications filed by the appellant/wife observed that so far as prayer for recalling PW-1 and PW-2 for cross examination is concerned, both of them have been cross examined at length by the counsel for the appellant/wife. Change of counsel by the appellant/wife, in the backdrop that she had been changing counsel very frequently to the extent that six counsel have represented her at different stages, was considered to be not a ground to permit recall of PW-1 and PW-2 for cross examination just for the reason that newly engaged counsel was not satisfied with the cross examination conducted by the previous counsel.

5. The prayer of the appellant/wife to place on record a bunch of documents containing 108 pages and affording an opportunity to her to prove the same was declined by the learned Principal Judge, Family Court on the ground that these documents were well within her power and possession, she was represented by a counsel, the documents should have been filed at the appropriate stage and there is no pleading in the written statement in respect of those documents. It was also noted that in the Transfer Petition No.79/2014 the High Court of Delhi vide order dated January 13, 2015 had already directed the concerned Court to dispose of the

case expeditiously preferable within a year. The applications have been filed at the stage of final arguments and if allowed it would have the effect of putting the clock back by 2½ years.

6. Learned counsel for the appellant/wife has submitted that due to the negligence of the previous counsel the documents could not be produced earlier at the stage of filing the written statement or even during the examination of appellant/wife and in the interest of justice it is required that an opportunity be given to appellant/wife to prove these documents. Learned counsel for the appellant/wife has further submitted that since cross examination of the respondent/husband (PW-1) and PW-2 was not conducted effectively by the previous counsel, they may be permitted to be recalled for further cross examination.

7. Order XIII Rule 1 stipulates that documentary evidence has to be produced at or before the settlement of issues.

8. In the decision reported as (194) 4 SCC 659 Billa Jagan Mohan Reddy & Anr. vs. Billa Sanjeeva Reddy & Ors. it was held as under:

'It is clear from its [Order XIII Rule 1] bare reading that the parties or their counsel shall be required to produce all the documentary evidence in their possession or power which they intend to rely on to establish their right along with pleadings or before settlement of the issues. The Court is enjoined under sub-rule (2) to receive such documents provided they are accompanied by an accurate list thereof prepared in the prescribed form. If they are not in the party's possession or custody, it shall be filed by the party along with an application to condone the delay in filing them. The explanation for delay is not as rigorous as one filed under Section 5 of the Limitation Act.'

9. The documents sought to be filed by the appellant/wife at the stage of final arguments were filed by her in the proceedings under Domestic Violence Act. It is not the case of the appellant/wife that the documents

were not in her power and possession. It is also not her case that any pleading in respect of those documents was made in the written statement or that reliance was placed while filing the list of documents alongwith the written statement.

10. The learned Principal Judge, Family Court while refusing to exercise discretion in favour of the appellant/wife has rightly observed that taking on record a bunch of documents containing 108 pages without there being any pleading to that effect, the appellant/wife could not be permitted to lead additional evidence merely because she put the blame on the previous could who filed the written statement in the divorce petition.

11. The sole purpose of asking the parties to file all the documents in their power and possession and to file list of documents to be relied upon in respect of the documents not in their power and possession is that the opposite party can suitably respond at the appropriate stage. If the majority of documents are withheld at the stage of trial, permitting a party to place on record the additional documents at the stage of final arguments would have the effect of denovo trial in respect of such documents which have been brought on record at the stage of final arguments and that too without any pleading or reliance in respect of such documents. The fact that these documents were forming part of another proceedings between the parties is sufficient to infer that the appellant/wife was in possession and knowledge of such documents since beginning. Thus, the learned Principal Judge, Family Court has rightly declined her prayer to place on record additional documents and lead evidence with the trial stands concluded.

12. The other two applications dated May 26, 2016 and June 06, 2016 pertain to recalling of PW-1 Jai Solanki (respondent/husband) and PW-2 Ishwar Singh respectively for cross examination. It is surprising that while

filing application for recalling PW-1 for cross examination, the counsel was not aware that PW-2 was also be recalled for cross examination and waited for another opportunity to pray for recalling of PW-2 for further cross examination. It is not disputed that throughout the appellant/wife had been represented by a counsel. The learned Principal Judge, Family Court has noted that she had been represented through six counsel till that date. When a counsel is engaged by a party it is on the presumption about the competency of the counsel. If cross examination of a witness is concluded by a counsel upto best of his capability, subsequent change of counsel by a party would not confer any right on him/her to recall the witness for further cross examination or to fill up the lacuna, if any, left. The witnesses cannot be harassed by a party by making them to reappear for cross examination just because the new counsel wants to further cross examine them. Recalling of a witness after the trial has concluded has the direct effect on expeditious conclusion of the trial.

13. The learned Principal Judge, Family Court has noted the directions given by this Court vide order dated January 13, 2015 in Transfer Petition No.79/2014 to conclude the trial within one year. That period has already lapsed. These applications have been moved by the appellant/wife just to further delay the disposal of the matter which is at the final stage and is a time bound matter.

14. We do not find any illegality whatsoever in the impugned order. The contention of the appellant/wife about engaging a new counsel can never be a ground to recall the witnesses for cross examination for the reason that if such type of pleas are accepted by the Court then there is no reason that that each subsequent counsel engaged by a party would find out some flaw or other in the cross examination of a witness conducted by the previous

counsel and would like to have an opportunity to cross examine a witness as per his/her perception.

15. The appeal has no merits and the same is hereby dismissed.

16. No costs.

CM No.27910/2016

Dismissed as infructuous.

**PRATIBHA RANI
(JUDGE)**

**PRADEEP NANDRAJOG
(JUDGE)**

AUGUST 16, 2016

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