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

+ **CM(M) 249/2017**

RITU SETHI

..... Petitioner

Through Mr.Manish Kumar, Mr.Mohit Arora
and Ms.Aarohi Holani, Advocates.

versus

VIVEK SETHI

..... Respondent

Through None.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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01.03.2017

C.M. No.8306/2017 (exemption)

Exemption is allowed subject to just exceptions. Application disposed of.

CM(M) 249/2017

Petitioner is aggrieved by the order dated 13.02.2017 vide which three application filed by the petitioner/non-applicant/wife had been disposed. The first application was an application under Section 151 CPC, vide which the petitioner-wife had sought to place on record certain additional documents and for a recall of PW-1 for further cross-examination. Admittedly, PW-1 had been cross-examined and discharged on 04.5.2009.

Perusal of this application shows that list/details of the documents which the wife wanted to confront to her husband (PW-1)

are not given. Not only have the documents not been detailed but the relevancy of the aforementioned documents have also not been mentioned. It appears that during the course of oral arguments, it has been highlighted by the wife that an agreement to sell purported to have been executed by her father in favour of a third party was a relevant document as it would show that the father of the petitioner wife had the financial strength to meet her husband's demand for dowry which was purportedly raised by the husband (PW-1). The trial court had noted this oral submission made by the petitioner. At the cost of repetition neither the details of the documents which the petitioner wife chose to confront PW-1/her husband and nor the relevancy of any such documents has been mentioned in the application. Learned Family Court Judge has rightly dismissed this application noting that the sale of this property was not an issue before the Family Court Judge as he was dealing with a petition for divorce on the ground of cruelty (under section (1)(1a) of the Hindu Marriage Act) which has been filed by the husband against his wife. There is no averment that any such plea was taken by the wifer in her defence. Thus that part of the order calls for no interference.

Petitioner is also aggrieved by the dismissal of her second application filed under Section 151 of the CPC seeking directions to the husband to furnish his latest income affidavit. This application was filed on 21.01.2017. The body of this application states that the income affidavit as per the judgment of Kusum Lata of this Court has not been followed. This Court notes this contention. This Court also notes that the Trial Judge has rightly noted that the application of the

wife under Section 24 of the H.M.A. Act had been disposed of sometime in the year 2004 i.e. long before the judgment of Kusum Lata was pronounced. There was thus no occasion to file an affidavit in terms of the said judgment. Dismissal of this application also calls for no interference.

Counsel for petitioner points out that there was yet a third application pending before the Trial Judge. He has drawn attention of this Court to the said application as also to the impugned order on this count. The impugned order does not make any reference to the details of this third application except a reference in the last but third para of the impugned order. The aforementioned application was an application purported to have been filed under Section 24 of the Hindu Marriage Act seeking enhancement of maintenance. This application was filed on 17.10.2016. The order sheets after 23.11.2016 have not been placed on record but the learned counsel for the petitioner submits that he has certified copies of the order sheets with him which shows that on 23.11.2016 the date fixed by the Trial judge for hearing on this application was fixed for 23.5.2017. The petitioner wife was constrained to move an application seeking preponment of that application which has been thereafter adjourned to 13.01.2017 on which date it was again adjourned to 07.2.2017 and it was then adjourned to 08.02.2017; opportunity to file reply has been granted to the non-applicant/husband; he did file a reply. However on a statement having been made on his behalf that he would willing to enhance to double the maintenance amount and pay Rs.20,000/- that application had been disposed of.

The tenor of the order on this score shows that this was largely a consent order inter se the parties. The non-applicant/husband had made a statement that he would be willing to pay the enhanced maintenance amount of Rs.20,000/- from the date of the filing of that application; no opposition has been recorded in the order.

The averments in the present petition have also been perused as also the ground on which this petition has been premised. There are five grounds i.e. A to E. It does not appear from any of the grounds that the petitioner was aggrieved by the order wherein the husband had agreed to pay Rs.20,000/- per month to the wife. Averments in the petition show that probably the drafting counsel was not even aware that the maintenance has been enhanced from Rs.10,000/- to Rs.20,000/- as the petitioner in this petition keeps on repeating that the maintenance at of Rs.10,000/- per month is on the lower side.

This Court also notes that this petition is pending before the Family Court Judge since the year 2004. PW-1/husband has been discharged from the witness box in the year 2009. All these applications appear to be nothing but a delaying tactics on the part of the wife in not allowing the progress in the trial of the case. This petition is wholly misconceived. It is dismissed with costs quantified at Rs.20,000/-

INDERMEET KAUR, J

MARCH 01, 2017

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