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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **MAT.APP.(F.C.) 51/2017 & CM 11663/2017**

SUNITA

..... Appellant

Through : Mr. Shailender Dahiya, Advocate

versus

SANJAY KUMAR

..... Respondent

Through : None.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

% **12.04.2017**

1. The present appeal has been filed by the appellant praying *inter alia* for setting aside an order dated 01.03.2017, passed by learned Principal Judge, Family Court, North Rohini, Delhi rejecting an application filed by her for examining a witness, who was not cited by her in the list of witnesses.

2. Briefly stated, the relevant facts of the case are that the respondent/husband has filed a petition against the appellant under Section 11 of the Hindu Marriage Act praying *inter alia* for a decree of divorce. After completion of the pleadings in the petition, issues were framed on 31.07.2013 and the parties were directed to file their list of witnesses, while exchanging copies thereof with each other. The respondent filed his evidence by way of affidavit in December, 2013. The evidence of respondent/husband had concluded on 04.03.2016 and on the very same day, the appellant/wife was directed to file the list of witnesses along with the affidavits, with a copy to the other side.

3. Admittedly, the appellant/wife had filed her list of witnesses much before that in December, 2013, wherein she had cited six witnesses, including Shri Mahavir Singh (father/RW-1), Shri Ishwar Singh (neighbour/RW-2) and four others. After producing RW-1 and RW-2 for recording their evidence, instead of examining the remaining witnesses cited by her, the appellant/wife filed an application under Section 151 CPC praying *inter alia* for permission to examine one Mr. Jitender (brother-in-law of the respondent).

4. The explanation offered in the application for seeking permission to examine Mr. Jitender is that it was in his presence that the facts about the previous marriage of the appellant/wife and pendency of an appeal before Punjab & Haryana High Court, were confirmed. It has further been averred in para 4 of application that the name of Mr. Jitender was originally not cited in the list of witnesses on a presumption that he will be under the influence of the respondent and will not depose the correct facts but in the first week of January, 2017 when the appellant's father had met Mr. Jitender, he had agreed to depose in the case.

5. The aforesaid application was dismissed by the learned Principal Judge, Family Court after taking note of the statement of the counsel for respondent that the sister of the respondent and Mr. Jitender are having a marital discord and have been living separately and therefore, he would be under the influence of the appellant herein. Observing that there was a strong probability of the appellant/wife having won over Mr. Jitinder, who is now ready to depose in her favour, having a strained relation with his wife (sister of the respondent) only to even a score and noting that the

appellant/wife is attempting to fill in the lacunae that has crept into her case, which is impermissible, the said application was dismissed.

6. Learned counsel for the appellant/wife submits that Mr. Jitender was not cited in the list of witnesses filed earlier, but he remains a relevant witness as he was present in one of the meetings held between the family members of the appellant and the respondent in March, 2009 when talks of their matrimonial alliance were going on in the year 2009 and he could verify about the fact that the appellant/wife had got a divorce and that her first marriage was over and this fact was to the knowledge of the respondent/husband.

7. Though learned counsel for the appellant/wife has not placed on record the evidence of the witnesses produced by her, in the course of arguments he has been requested to hand over the said evidence, which is available in his file. On perusal of the affidavit by way of evidence filed by the father of the appellant, Shri Mahavir Singh (RW1/A), it transpires that he has specifically deposed that Mr. Jitender was present along with the respondent and his mother and brother in March, 2009 when they had visited the residence of the appellant to carry forward the talks of the matrimonial alliance and he had verified the fact that the first marriage of the appellant had been terminated and an appeal was pending against the same.

8. Though the affidavit of the petitioner's father mentions the presence of the respondent's brother, mother and brother-in-law during the negotiations for the marriage, the appellant/wife has only sought permission to summon Mr. Jitender, who admittedly, has an estranged relation with the respondent's sister. It is rather curious that when there

are two other witnesses to the conversation that had taken place in March, 2009 at the residence of the appellant, namely, the respondent's brother and the mother, the appellant has selectively elected to examine only Mr. Jitender and that too at the fag end of the evidence. It is not as if the relevance of the said witness, was unknown to the appellant/wife when she had filed the list of witnesses in December, 2013 or even thereafter, when the evidence of the respondent was concluded in March, 2016. However, the application for summoning the said person has been moved by the appellant only on 23.01.2017, after almost one year if reckoned from March 2016.

9. At this belated stage, when the matter is listed for final arguments on 26.04.2017, the appellant cannot be permitted to seek leave to produce another witness, namely, the brother-in-law of the respondent, only to fill up the vacuum/lacuna in her evidence. Even otherwise, on going through the ordersheets of the proceedings before the Family Court, it is apparent that the appellant has been adopting all kind of dilatory tactics, an attempt, that must be curbed with a firm hand.

10. For the reasoning noted above, we are not inclined to grant any relief to the appellant. The prayer made in the appeal is declined and the appeal is dismissed in limine, along with the pending application.

HIMA KOHLI, J

SANGITA DHINGRA SEHGAL, J

APRIL 12, 2017/ssc