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

+ CRL.M.C. 3830/2014

Order reserved on 9th November, 2017

Order pronounced on 17th November, 2017

PANKAJ

..... Petitioner

Through: Mr. Nasir Kamal, Advocate

versus

RENU

.... Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. The present petition is preferred by the petitioner under Section 482 of The Code of Criminal Procedure, 1983, (hereinafter referred as 'Cr.P.C') for *inter-alia* **setting aside the Order** dated 02.06.2014, passed by the learned Additional Session Judge (hereinafter referred 'ASJ'), Karkardooma Court, Delhi wherein the learned ASJ upheld the order dated 28.11.2013 passed by the learned Metropolitan Magistrate (hereinafter referred 'MM'), Mahila Courts, Karkardooma Courts in Maintenance Petition no. 239M/2012 and Execution No. 261/2012.
2. The brief facts as stated by the petitioner giving rise to the present case are that the marriage between the petitioner and the respondent was solemnized on 21/02/2007 and the divorce decree was obtained by the petitioner by an ex-parte proceedings on 1/10/2013. The respondent had filed a petition, with the name of

petitioner as Pinki instead of Pankaj, under Section 125 Cr.P.C for grant of maintenance wherein the order dated 04/07/2012 was passed for providing of maintenance of Rs. 3,300/- pm to the petitioner. The petitioner came to know about order dated 04/07/2012 on the said maintenance petition only after receiving of the notice on Execution No. 261/12 and due to which he could not appear during pendency of the maintenance petition and ex-parte order was passed on 28.02.2012 against the petitioner. The petitioner, thereafter, filed an application for setting aside of the ex-parte order dated 28.02.2012 and ex-parte judgement dated 04.07.2012 along with the objections in the execution Petition. Vide order dated 28.11.2013 in Execution No.261/12, the said application was dismissed by the Trial Court. The petitioner filed the revision against the said order but the same was rejected vide order dated 02.06.2014. Hence, the present petition.

3. The learned counsel for the petitioner contended that the Trial Court has erred in passing the order dated 02.06.2014, as the same is based on conjectures and surmises; that it has been wrongly observed by the concerned court in the order dated 02.06.2014; that there is no mention of the petitioner obtaining divorce ex-parte in the said order; that the respondent deliberately stated the name of the petitioner as 'Pinki' instead of 'Pankaj' in the maintenance petition filed by her and did not even implead the correct name thereafter; that the summon was not received by him on the said maintenance petition; that the mutual divorce was obtained on 04.03.2008 where actual name of the petitioner was mentioned and

the decree was obtained on 01.10.2013, therefore, no maintenance is maintainable after the decree.

4. The submissions made by the party have been considered and the records have been perused.
5. The main contention in the present case by the learned counsel for the petitioner that vide order dated 28.11.2013, the Trial Court in Execution No.261/12 has specifically stated that “ Vide the present order, I shall decide the objections filed by the J.D in the execution petition as well as the application for setting aside the ex-parte order and the judgement in the main file...” Therefore, it has been wrongly observed by the concerned court in Criminal Revision No. 05/14 vide order dated 02.06.2014 that “..Further, without seeking setting aside of the original order in the main petition, the petitioner cannot seek setting aside of judgement in execution petition. For all grounds taken by the trial court in the main petition are record of that petition and cannot be revised in the present petition..” On the careful examination of both the orders dated 28.11.2013 and 02.06.2014, it is clear that the ex-parte order dated 28.11.2013, was never challenged by the petitioner. However, he moved an application for setting aside order dated 28.11.2013 in the execution petition which was not maintainable. The learned ASJ has given a detailed and well explained order on 02.06.2014 that the petitioner cannot file an application for setting aside the order in the main petition along with the objections to the execution petition in the petition execution petition as the application for setting aside the order dated 23.11.2013 needs to be

filed separately and only the objection raised on behalf of the petitioner on the execution can be filed by him in the Execution Petition No. 261/12.

6. Accordingly, the present petition is dismissed.

CRL. M.A. 17923/17

In view of the aforesaid order, the present application is rendered infructuous and disposed of.

Application stands disposed of.

SANGITA DHINGRA SEHGAL, J

NOVEMBER 17, 2017 gr//

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