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

+ CM(M) 722/2017

MALINI SEN

..... Petitioner

Through: Mr. Jaideep Singh and Ms. Ritu
Apurva, Advs.

Versus

RAJESH SEN

..... Respondent

Through: Mr. Arvind K. Nigam, Sr. Adv. with
Mr. Abhimanue Shrestha, Mr. Mikhil
Sharda and Mr. Akshay Bhandari,
Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **18.07.2017**

CMs No.24962/2017 & 24963/2017 (both for exemption)

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

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3. This petition under Article 227 of the Constitution of India impugns the order (dated 11th April, 2017 of the Court of Principal Judge (South), Family Courts, Saket Courts, New Delhi in Guardianship Case No.08/17 filed by the respondent against the petitioner) allowing the application filed by the respondent under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC) for amendment of the petition.

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4. The counsel for the petitioner at the outset contends that another petition arising from the same order is pending before Justice J.R. Midha and listed next on 28th July, 2017 and states that this Court may consider whether both the petitions should be considered by the same Judge.

5. The senior counsel for the respondent appearing on advance notice states that in fact the order impugned of allowing the amendment is of 2nd March, 2017 and not of 11th April, 2017. He further states that the respondent, on the following date before the Family Court i.e. 17th March, 2017, tendered to the counsel for the petitioner the costs imposed by the order dated 2nd March, 2017 and subject to which the amendment was allowed but which costs were refused by the counsel for the petitioner stating that he had instructions from the petitioner to prefer an appeal against the order dated 2nd March, 2017. It is stated that inspite of the knowledge of the date of the order, in this petition, the order of amendment is portrayed as of 11th April, 2017.

6. The counsel for the petitioner apologises for his mistake.

7. The counsels, before filing and signing the petitions, are expected to ensure that what is pleaded and written therein is as per the records of the Courts whose orders are impugned and such mistakes on the part of the advocate himself can be a ground for summary rejection of the petition.

8. Be that as it may, finding that the order dated 11th April, 2017 (correct date 2nd March, 2017) is only of allowing the application for amendment, I have enquired from the counsel for the petitioner as to what part thereof has been challenged before Justice J.R. Midha.

9. The counsel for the petitioner then states that the said order is not under challenge but some other order is under challenge.

10. The senior counsel for the respondent also informs that vide order dated 16th February, 2017 in TR.P.(C) No.91/2015, the petitioner had undertaken to appear before the Family Courts (South), Saket Courts on 2nd March, 2017 and the petitioner herein did not appear on subsequent dates and has already been proceeded against *ex-parte* on 3rd July, 2017.

11. The counsel for the petitioner states that he is not aware of the same.

12. The impugned order records that till the filing of the application for amendment, the recording of evidence had not commenced in the petition.

13. The counsel for the petitioner does not controvert the said part of the order.

14. The impugned order has reasoned that though some of the amendments sought existed prior to the filing of the petition but were mere references to previous litigation between the parties and which proceedings could not have been fabricated or created and thus has allowed the said amendments by compensating the petitioner with costs.

15. The impugned order, with respect to other amendments sought reasons that the same pertained to events subsequent to the filing of the petition and could always be seen. The objection of the petitioner that the amendments related to the proceedings in mediation and which could not be relied upon was negated by observing that the pleas though may have been the outcome of mediation but were not part of mediation.

16. No fault has been found by the counsel for the petitioner with the aforesaid reasoning; in fact the counsel for the petitioner has not even bothered to file the copy of the guardianship petition as originally filed or the application for amendment. The only inference can be that this petition is being pursued half-heartedly.

17. No case for interference under Article 227 of the Constitution is made out.

18. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

JULY 18, 2017

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