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

+ CM(M) 1382/2016 and C.M. Appl. 47493/2016

SHALINEE GURWARA

..... Petitioner

Through: Mr. Malvika Rajkotia and Ms. Tanya Prasad, Advocates

versus

RIKIN GURWARA

..... Respondent

Through: Mr. Sunil Mittal, Senior Advocate
with Mr. Bhavya Sethi, Advocate

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

% 26.05.2017

CM 47495/2017

The delay in filing the petition is condoned. The application is disposed of.

CM(M) 1382/2016

1. The petitioner has challenged the order dated 16th December, 2016 whereby the learned Family Court has directed the petitioner to file a fresh affidavit by way of evidence.
2. Learned counsel for the petitioner submits that the petitioner filed the affidavit by way of evidence on 12th December, 2011 and the respondent cross-examined the petitioner for about two years on the basis of the said affidavit. The cross-examination of the petitioner commenced on 12th May, 2014 and is still continuing. During the course of cross-examination, the respondent raised the objection that the petitioner's affidavit by way of evidence was not formally tendered.
3. Learned senior counsel for the respondent submits that the respondent

filed an application to raise an objection that the contents of the affidavit were beyond pleadings but during the course of the hearing of the application, the Family Court took the view that the affidavit was not formally tendered by the petitioner.

4. This Court is of the view that after two years of the cross-examination of the petitioner on the basis of her affidavit filed as back as in the year 2011, it was not proper for the learned Family Court to direct the petitioner to file a fresh affidavit by way of evidence.

5. The petition is allowed and impugned order dated 16th December, 2016 is set aside. The petitioner's affidavit by way of evidence filed on 12th December, 2011 is treated to have been validly tendered in evidence and the learned Family Court shall continue with the cross-examination of the petitioner.

6. Vide order dated 15th July, 2016 in C.M. (M) 482/2016, this Court directed the Family Court to expedite the hearing of the petition and decide the same within six month. Since the case is still at the stage of cross-examination and the respondent has filed list of more than 20 witnesses, learned Family Court is directed to expedite the hearing and endeavour to decide the petition within a period of one year from today.

7. Pending applications are disposed of.

8. Copy of this order be given *dasti* to counsels for the parties under signatures of the Court Master.

J.R. MIDHA, J.

MAY 26, 2017

rsk