

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 22.11.2017
Judgment Pronounced On: 18.12.2017

MAT.APP.(F.C.) 150/2017 & CM Nos.30836/2017 & 30837/2017

S J

..... Appellant

versus

S P

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Sunil Mittal, Sr. Advocate with Mr. Dhruv Grover and Ms. Seema Seth, Advocates

For the Respondent : Mr. Siddharth Aggarwal, Advocate with Mr. Kunal Seth and Ms. Jahnvi Dubey, Advocates

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The present appeal under Section 19 of the Family Courts Act, 1984 impugns an order dated 19.08.2017, passed by the learned Principal Judge, Family Courts, Karkardooma Courts, Delhi, in HMA No.1601/2014 (hereinafter referred to as the 'subject petition'), whereby, the right of the appellant-wife to further cross examine the respondent-husband was closed.

2. The facts as are necessary for the effective adjudication of the present appeal are briefly adumbrated as follows:

- i. The appellant and the respondent got married on 23.06.2004 in Noida, Uttar Pradesh and, admittedly, lived together as husband and wife till 05.10.2005. A child, namely, Ms. R, was also born from the said wedlock, and is currently in the custody of the appellant wife. The respondent husband (petitioner therein) instituted the subject petition under the provisions of Sections 13(ia) and 13(ib) of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'said Act') in March, 2013.
- ii. Subsequent thereto, the respondent husband filed a petition before a learned Single Judge of this Court under Article 227 of the Constitution of India, being C.M. No.332 of 2017, seeking expeditious disposal of the subject petition. It was urged on behalf of the counsel for the respondent husband therein, that the appellant wife in order to delay the disposal of the subject petition is resorting to dilatory tactics. The said petition was disposed of by a learned Single Judge of this Court vide order dated 22.03.2017, with a direction to the Family Court concerned to dispose off the subject petition expeditiously and,

preferably, within a period of 14 months. For the sake of felicity, the said order dated 22.03.2017 is reproduced *in extenso* hereinbelow:

“ After some arguments, learned senior counsel for petitioner under instructions submits that he would not be pressing any of the prayers made in the petition except prayer (iii). Prayer (iii) seeks expeditious disposal of the divorce petition. This divorce petition had been filed by the petitioner under Section 13(1)(ia) and (ib) of the Hindu Marriage Act. This was filed in March, 2013. Contention of the petitioner is that the respondent/estranged wife has deliberately delayed the filing of the written statement which was filed three years later which was only on 17.8.2016. This Court notes this submission. This Court also notes the order which has been passed by the Court and which was the subject matter of prayer (i) of the present petition. This was an order dated 08.2.2017. The court had noted that the respondent wife had filed an application under Section 24 of the H.M.A. which is pending adjudication. This application has been filed in May, 2016. 10 months later i.e. in February, 2017 the petitioner chose to file an application under Section 165 of the Evidence Act. Learned Family Court Judge is dealing with both the applications. It is left to the discretion of the learned Family Court Judge to dispose of the applications in accordance with law.

However, noting the contentions of the petitioner and his grievance being largely to the effect that the matter has been delayed for no fault of the petitioner, the learned Family Court shall endeavour to dispose of the divorce petition expeditiously and preferably within an outer limit of 14 months from the date of the receipt of this order.

Learned senior counsel for petitioner additionally submits that the format in which the affidavit had been filed by the respondent does not adhere to the guidelines/directions of this Court in the judgment of Kusum Sharma Vs. Mahinder Kumar Sharma, 217(2015) DLT 706. This shall be considered by the Family Court Judge while dealing with the aforementioned applications.

With these directions petition disposed of.”

iii. On 01.06.2017, the Family Court was pleased to frame the following issues:

- “1. Whether the petitioner was treated with cruelty by the respondent after solemnization of the marriage? OPP
2. Whether the respondent has withdrawn from the society of the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition, without any reasonable cause? OPP.”

Simultaneously, arguments on an application under Section 24 of the said Act, instituted by the appellant wife, were concluded and the matter was reserved for orders for 15.07.2017. In addition, the parties were directed to file the list of witnesses and the respondent husband was also directed to file his affidavit by way of evidence, with a copy thereof to the appellant wife.

iv. Thereafter, on an application filed by the respondent husband before the Family Court under Order 18 Rule 4 of the Code of Civil Procedure, 1908 (hereinafter referred to as ‘CPC’) read with Section 151 CPC, seeking appointment of a Local Commissioner for expeditious recording of evidence; for which the respondent husband also undertook to bear the cost, the Family Court vide order dated 27.07.2017 appointed a Local Commissioner and directed for the

evidence to be recorded from 08.08.2017 onwards. The application was instituted on the ground that since the subject petition was pending adjudication for more than 4 years; and he was ordinarily residing and working in Nairobi, Kenya and visiting India from 05.08.2017 till 13.08.2017, essentially for recording of his evidence, the same be concluded within this time duration. This application seeking appointment of a Local Commissioner was opposed by the counsel for the appellant wife. However, the Family Court, whilst rejecting the contentions advanced on behalf of the appellant wife, allowed the application vide order dated 27.07.2017, and appointed a Local Commissioner. The said order dated 27.07.2017 is extracted hereinbelow:

“... The application is filed by petitioner praying for appointing local commissioner, a retired District Judge to record evidence in the matter and to conclude evidence of petitioner S.P. between 5.8.17 to 13.8.17.

Heard.

It has been submitted by Ld. Counsel for petitioner that petitioner who is presently working in Nairobi has planned to visit India and will be available before court till 13.8.17. The Ld. Counsel for petitioner has submitted that parties are not living together since 5.10.2005 and the instant petition was filed on 11.3.2013 which is pending for four years. It is now listed for 8.8.17 for recording of evidence. It is submitted that as per mandate of Sec. 21B HMA, the proceedings of the case should be concluded as expeditiously as possible and endeavour has to be made to conclude the

same within six months. It is also pointed out that vide order of the Hon'ble High Court of Delhi dt. 22.3.17 in CM(M) 332/17, it has been directed that court shall make an endeavour to dispose of divorce petition as expeditiously as possible within an outer limit of 14 months from date of receipt of order.

Ld. Counsel for petitioner has submitted that petitioner is ready and willing to bear cost of local commissioner and local commissioner be appointed to foster the object of Sec. 21B of HMA.

Ld. Counsel for respondent has opposed the application and has relied upon judgment of the Hon'ble High Court of Delhi in M/s. H. Dohil Constructions (P) Ltd. v. Rohit Lal & Ors. Wherein the Hon'ble High Court of Delhi had held that the order appointing LC and cost imposed even after opposition of appointment of local commissioner was unwarranted. He has submitted that if court records evidence, the demeanour of witness may be observed by court whereas when evidence is recorded by LC, the demeanour of witness may not come on record.

On the other hand, Ld. Counsel for petitioner has relied upon judgment of DB of the Hon'ble High Court of Delhi cited as Fashion Linkers vs. Savitri Devi MANU/DB/1263/95, wherein, it was opined by the Hon'ble High Court of Delhi that in matters where the suit is not that old and parties do not consent, but otherwise, there is very grave urgency in the matter or where a very large number of witnesses have to be examined, exercise of power under this Rule cannot be faulted and it must be presumed that discretion is exercised properly within the intendment of the Rule. It is further observed by the Hon'ble High Court of Delhi that court will record reasons for appointment whenever the appointment is not by consent. It is also observed that court may not authorize the commissioner to exercise any judicial functions such as rejecting the questions or answers or documents. In such situations, commissioner will adopt the procedure similar to the one indicated u/o 26 CPC.

I have given thoughtful consideration to rival contentions.

After receipt of order of the Hon'ble High Court of Delhi dt. 22.3.17 for expeditious disposal of case within outer limit of 14 months. The application u/s 24/26 HMA as filed by respondent was taken up for arguments and disposal at the first instance which consumed enormous time of court and application could be disposed of only after a dozen of hearings. This shows the kind of contest being made by parties and ultimately the disposal of the case is likely to be at the cost of other litigants who are contesting their matters before court regarding maintenance, custody of children etc. as pendency of cases as on date in this court is nearly 2400-2500. To meet the mandate of early disposal of case as per directions of the Hon'ble High Court of Delhi and to save precious judicial time for dealing with other litigants when the petitioner is ready and willing to bear the cost, I find it appropriate to allow the application of petitioner and appoint a retired judge of the District Court as Local Commissioner for concluding the evidence.

Accordingly, Sh. S.C. Malik, retired Addl. District & Sessions Judge (Mob. No. 9910384635) is appointed as Local Commissioner for recording the evidence in the matter. It has been submitted by Ld. Counsel for petitioner that the witnesses of petitioner consist of petitioner himself and two other witnesses. List of witnesses has not been filed by the respondent so far. Let the same be filed within a week by supplying advance copy to O/P. For recording the evidence of parties and other witnesses, a per day fee of Rs.25,000/- is fixed to be paid by the petitioner. The petitioner will bring his own typist and typewriter to record the evidence at the dictation of Ld. LC, the cost of which shall also be borne by petitioner. **It is clarified that Ld. LC shall not adjourn the matter for cross-examination of petitioner once it is started and his cross-examination shall be concluded on day-to-day basis starting from 8.8.17 at 12 Noon in the premises of the court, as the petitioner shall be coming to India for this purpose.**

It is also clarified that the evidence in the matter shall be recorded in the court premises and Ahlmad/Asst. Ahlmad of the court shall be available to the Ld. Local Commissioner alongwith court record. The first date is fixed for the purpose

is 08.8.2017 at 12 Noon before Ld. Local Commissioner in this court complex. **The adjournment in extreme circumstances may be given by ld. LC after cross-examination of petitioner but the cost shall be borne by the party seeking adjournment which will be payable to LC.** Advance payment of Rs.50,000/- shall be made by the petitioner to Ld. LC before start of the evidence on 8.8.2017 and thereafter, Rs.25,000/- shall be paid to Ld. LC on each date if the evidence is not concluded in two days.

The LD. Local Commissioner shall take all the precautions as mentioned in judgment in Abnash Kaur v/s. Surinder Singh Sandhu & others bearing Civil Revision No. 870/2012 decided on 10.2.2012 by Hon'ble High Court of Punjab & Haryana, Deepak Kapur v/s. Ashok K. Ghose & ors. 1994 (DRJ) (DB) 489; B.N. Mullick & Ors. v/s. Sita Ram Mullick decided on 30.10.1998 by Hon'ble High Court in FAO (OS) 194/96, Fashion Linkers v/s. Savitri Devi 1995 (34) (DRJ) 672 and Smt. Pushpa Devi v/s. Bimla Devi & Ors. 2000 (II) Apex Decision Delhi 405 and order XXVI CPC

(Emphasis supplied)

- v. On 08.08.2017 i.e. the date fixed for recording of evidence, an application was filed by the appellant wife before the Family Court, seeking stay of the recording of evidence, essentially on the ground that: a) the order of the Family Court appointing a Local Commissioner has been assailed by them before this Court; and b) the affidavit by way of evidence of the respondent husband was served on them belatedly, on 08.08.2017 itself. The Family Court vide order dated 08.08.2017 dismissed the application for stay, whilst observing that the appellant wife already had notice of the affidavit of the

petitioner and since no stay was granted by this Court against the operation of the order impugned therein i.e. order dated 27.07.2017 appointing a Local Commissioner, there cannot be any stay of the matter. However, the Family Court granted a day's time to the appellant to go through the affidavit by way of evidence filed by the respondent. The relevant portion of the said order dated 08.08.2017 dismissing the application for stay, is reproduced hereinbelow:

“... It was made clear to parties in order dated 27.7.2017 that petitioner is coming from abroad for the purpose of his evidence and therefore evidence was fixed before Ld. LC today itself at 12 o'clock. It is already 1 pm by now. The copy of the order dated 27.7.2017 was supplied to parties and their counsels dasti but Ld. Counsel for respondent has submitted that since it took time to obtain certified copy of same order, the order could not be assailed before the Hon'ble High Court of Delhi as respondent is aggrieved by order of appointing LC to record evidence. This is no ground of adjourn the matter that respondent has assailed the order of the court before the Hon'ble High Court of Delhi unless there is any direction to this court to stop the evidence in the matter. The Ld. Counsel for respondent has submitted that he has received copy of affidavit of evidence today itself in the court and therefore, he requires some time to go through affidavit for the purpose of evidence.

The respondent has already been served of copy of affidavit through email and whatsapp as per the affidavit of petitioner and when she has herself failed to inform petitioner/counsel about the change of counsel well in time despite having engaged another counsel on 3.8.2017, this court is of opinion that respondent was already having the notice of copy of affidavit of evidence of petitioner. It was already made clear by court vide order dated 27.7.2017 that no adjournment will be granted in recording evidence of

petitioner who has come from abroad for this purpose, the application of respondent seeking stay of recording of evidence and application u/s 151 CPC is found not tenable and hence dismissed.

The parties shall proceed right now to ahlmad room of court where ld. LC is waiting for parties/ld. Counsels as per the directions the petitioner shall tender his affidavit of evidence and exhibit the documents before Ld. LC today itself and his cross-examination shall be adjourned for tomorrow i.e. 09.08.2017 at 12 noon so that ld. Counsel for respondent is able to go through the affidavit. Time of 12 noon tomorrow has been given at the asking of Ld. Counsel for respondent who is not available at 10 am.

At this stage, Ld. Counsel for petitioner has shown to the court the copy of list witnesses supplied to him by post is different than what has been filed on court. The list of witnesses filed in court shall be taken as the final list of respondent.

Be put up for before Ld. LC right now i.e. 1:15 pm and before court on dated fixed i.e. 23.9.2017 at 2 pm.

Dasti copy of order be given to parties and ld. LC.”

- vi. Aggrieved by the said order dated 27.07.2017, an appeal filed by the appellant wife, being MAT.APP.(F.C.) No.144 of 2017, came up before a co-ordinate Bench of this Court on 11.08.2017. The said order dated 27.07.2017 was assailed by the appellant wife essentially on the ground that since the Local Commissioner has been recording evidence on a day-to-day basis, from 12 noon onwards to beyond 6 P.M., it is causing great hardship to the counsel of the appellant wife as they have other cases to attend to. On the other hand, during the course of arguments in the said MAT.APP.(F.C.) No.144 of 2017, it

was submitted by counsel on behalf of the respondent husband that the appellant wife is trying to delay the conclusion of recording of evidence, inasmuch as, sixty-six witnesses have been cited by her and all sort of irrelevant questions are being put to the former in order to delay the disposal of the subject petition. The appeal was disposed of by a co-ordinate Bench of this Court vide order dated 11.08.2017, with the following directions:

“4. The aforesaid submissions are vehemently disputed by learned counsel for the appellant, who denied that any attempt is being made by the appellant to delay conclusion of the evidence before the learned Local Commissioner. **He assures us that though 66 witnesses have been cited by the appellant, the said list shall be pruned to about 10 witnesses.**

5. **Having gone through the evidence recorded before the Local Commissioner and looking at the nature of the questions posed to the respondent in his cross-examination, we deem it appropriate to grant permission to the Local Commissioner to disallow all irrelevant questions.** To avoid confusion and crowding, parties shall ensure that only two counsels appear for them before the Local Commissioner for the purpose of recording the evidence. In the event, the Local Commissioner notices that either of the parties is attempting to record the evidence on their mobile phones or any other electronic device as alleged before us, he shall be entitled to confiscate the instrument in question and retain it with him till the evidence is concluded for the day.

6. After the cross-examination of the respondent (PW-1) is concluded, the Local Commissioner is requested to record the remaining evidence on a day-to-day basis, from 2 PM to 6 PM. In the event, either of the parties find it inconvenient to appear

on a daily basis before the Local Commissioner for conclusion of the evidence in the case, they are at liberty to approach the learned Family Court for seeking modification of the impugned order, limited to the above aspect....”

(Emphasis supplied)

- vii. Thereafter, on 17.08.2017, pursuant to the order dated 16.08.2017 of the Local Commissioner, the subject petition was once again taken up by the Family Court for fixing time frame for conclusion of cross-examination of the respondent husband (PW-1 therein). The Family Court, whilst observing that reasonably long time has been granted to the appellant wife for cross-examination of the respondent husband, vide order dated 17.08.2017, passed the following directions:

“.... It has been submitted by the Ld. Counsel for petitioner that the cross-examination of the petitioner has already been done for about 3 ½ days who has come from Nairobi for the purpose of attending the present case and he has to leave India for Nairobi by tomorrow evening as he has already extended his leave. The Ld. Counsel for respondent has submitted that the respondent shall conclude the cross-examination of the petitioner by the end of 19th day of this month by 6.00 pm. Although, such long timing has been opposed by the Ld. Counsel for petitioner but in the interest of justice, it is ordered that the respondent shall conclude the cross-examination of petitioner on or before 19.08.2017 at 5.00 pm. On 19.08.2017, the evidence will start at 11.00 am instead of 12.00 noon as the Ld. Counsel for petitioner has submitted that petitioner has to catch a flight on that date itself in the evening. Whereas the Ld. Counsel for respondent has objection to this submission of Ld. Counsel for petitioner that petitioner has to catch a flight on the evening of 19.08.2017 the court has given a reasonably long time for concluding the cross-examination of petitioner by the

respondent i.e. by 5.00 pm of 19.08.2017. The parties shall abide by the directions. It is already 12.10 pm by now, the parties shall proceed to the chamber where Ld. LC would be waiting for recording further cross-examination of the petitioner. Copy of the order be given dasti.”

- viii. On 19.08.2017 i.e. the last date fixed by the Family Court for the cross-examination of the respondent husband by the appellant wife, the Local Commissioner; after recording the cross-examination of the former till 04:45 P.M., on the submission of the counsel for the latter that he will take one more day to complete the cross-examination of the respondent husband, directed for the file to be put up before the Family Court.
- ix. Consequent thereto, the Family Court vide impugned order dated 19.08.2017 closed the right of the appellant wife to further cross-examine the respondent husband, whilst observing as follows:

“ It is 5:50 pm by now when the file has been put as desired by Ld. LC who has been recording cross-examination of petitioner being PW1. After the order of the Hon’ble High Court of Delhi in MAT Appeal (FC) no. 144/2017 dated 11.8.17, the further cross-examination of PW1 was carried out on 11.8.17 and 16.8.17 and thereafter the matter was taken up before this Court on 17.8.17 as put up by ld. LC vide his order dated 16.8.17, whereby, Ld. LC had sought direction of court for fixing time frame for conclusion of cross-examination of PW1. Accordingly, vide order of the court dated 17.8.17, it was directed that the cross-examination of PW1 shall be concluded by 5 pm today. The contents of order are not repeated for the sake of

brevity.

The Id. Sr. Advocate for respondent has submitted that respondent could not conclude cross-examination of PW1 despite due efforts and requires at least one day more time to conclude his cross-examination. The Id. Sr. Advocate has also submitted that despite accident suffered by briefing counsel and dog bite, he did not take any adjournment or delayed the proceedings. He has further submitted that if the petitioner files affidavit of evidence of other witnesses and supplies a copy of same to respondent, the respondent is ready to cross-examine other witnesses of petitioner and petitioner may appear subsequently on the date convenient to him for his remaining cross-examination. It is submitted that for the commitment of the counsel for respondent to conclude the cross-examination by a particular date it should not hamper the substantial justice to her whose precious right is being affected.

Be that as it may, the direction to conclude the cross-examination of PW1 by 5 pm today was passed considering the facts and circumstances of the case and at the consent of the Id. Counsel for respondent that he will conclude cross-examination of petitioner by 5 pm today. Sufficiently long time has already been given to respondent for the said purpose, I am accordingly constrained to close the right of the respondent to further cross-examine the petitioner (PW1). ”

(Emphasis supplied)

3. It would be submitted by Mr. Sunil Mittal, learned Senior Counsel appearing on behalf of the appellant wife that sufficient time was not provided to them to prepare for the cross-examination of the respondent husband, inasmuch as, although the respondent by way of said order dated 01.06.2017 was directed to file their affidavit by way of evidence and supply a copy thereof to the former, the same was not provided to them until

05.08.2017; and further that the respondent husband also filed some additional voluminous documents, belatedly, on 15.07.2017, which were required to be considered for preparing for the cross-examination.

4. In order to establish his bona fides towards early adjudication and disposal of the subject petition, learned Senior Counsel would invite our attention to an OPD card annexed to the present appeal, to urge that despite the briefing counsel having suffered an accident in the morning of 18.08.2017 and, thereafter, been bitten by a dog on the same night, no adjournment was sought either on 18.08.2017 or 19.08.2017.

5. It would then be urged that the concerned Principal Judge, Family Court, on 17.08.2017, compelled the counsel for the appellant to conclude the cross-examination of the respondent by 19.08.2017.

6. Per contra, learned counsel appearing on behalf of the respondent husband would submit that the present appeal under the garb of extension of time to conduct cross-examination of the latter, is one of the many attempts of the appellant wife to delay the disposal of the subject petition.

7. Further, it would be urged that sufficient time was afforded to the appellant wife to conduct the cross-examination of the respondent husband; however, the former, by resorting to dilatory tactics, has throughout the

pendency of the subject petition made an attempt to harass the latter, inasmuch as, the respondent husband is working and residing overseas i.e. in Nairobi, Kenya, and he took time off from work and visited India essentially for his cross-examination.

8. We have considered the submissions made on behalf of the counsel for the parties and perused the case record.

9. The issue before us is within a very narrow compass, inasmuch as, *whether the appellant wife should be granted further time to cross-examine the respondent husband?*

10. In relation to the contention advanced on behalf of the appellant wife, that the respondent husband belatedly supplied them with a copy of his affidavit by way of evidence, it would *firstly* be relevant to refer to the said order dated 08.08.2017, whereby, the Family Court whilst dealing with the plea of the appellant wife that the affidavit was served on her on 08.08.2017 in the Court itself; observed that as per the affidavit filed by the respondent husband on record therein, the respondent already stood served with the affidavit through email and *whatsapp* on 05.08.2017. The Family Court further observed that since the appellant wife has failed to inform the respondent husband about the change in counsel by her on 03.08.2017, the

former was deemed to have notice of the affidavit. However, the Family Court, in the interest of justice, granted the appellant wife further time of one day to examine the affidavit and prepare for the cross-examination of the respondent husband, which was adjourned to 09.08.2017.

11. The said order dated 08.08.2017, granting the appellant wife *further* period of one day to prepare for the cross-examination of the respondent husband has not been challenged; and has become final.

12. *Secondly*, it would be relevant to refer to the said order dated 11.08.2017, passed by a co-ordinate Bench of this Court in MAT.APP.(F.C.) No.144 of 2017. A bare reading of the said order dated 11.08.2017 would also show that no contention was raised by the appellant wife therein, in support of her purported grievance raised for the first time now that she was not granted enough time to prepare for the cross-examination of the respondent husband.

13. On the contrary, a bare perusal of the said order dated 17.08.2017 of the Family Court would show that the counsel of the appellant wife, had of his own accord, undertook to conclude the cross-examination of the respondent husband by 19.08.2017.

14. In this view of the matter, the appellant wife, at this stage, after cross-

examining the respondent husband at length for more than six days, cannot be belatedly permitted to urge before us that enough time was not granted to her to examine the affidavit by way of evidence filed by the latter and prepare for cross-examination, when the said plea was not raised on either of the earlier occasions and the final date for concluding the same was fixed on the submission of the counsel for the appellant wife herself.

15. Insofar as, the contention with respect to other set of voluminous documents is concerned, it would be relevant to note that the said documents include photographs of the marriage solemnized between the parties herein, and not other substantial documents requiring the consideration of fresh issues. Moreover, these voluminous documents stated to be running into 104 pages were admittedly available to the appellant wife as early as on 15.07.2017 i.e. almost a month in advance of the first date fixed for recording of evidence.

16. Therefore, no prejudice can be said to have been caused to the appellant wife from the act of the respondent husband in filing such documents after the framing of issues, so as to entitle the former to further time to cross-examine the respondent husband.

17. In view of the foregoing discussion, the submission made on behalf of

the appellant that he was not afforded enough time to prepare for the cross-examination of the respondent is untenable and does not hold water.

18. Coming to the submission advanced on behalf of the appellant that the Family Court, on 17.08.2017, compelled the counsel for the appellant to conclude the cross-examination of the respondent husband by 19.08.2017, we are constrained to take strong exception to such unfounded and vexatious allegations being leveled against a senior judicial officer.

19. This allegation, without any evidence in support of the same, appears to be an afterthought; in order to seek extension of time to cross-examine the respondent husband, and is summarily rejected.

20. Needless to state, that we are not unmindful of the duties of a Family Court under the Family Courts Act, 1984. The Hon'ble Supreme Court of India in *Bhuwan Mohan Singh v. Meena and Others* reported as (2015) 6 SCC 353, whilst reiterating the principle of law in relation to how a proceeding under Section 125 of the said Act has to be dealt with by a Court and the duty of a Family Court after the establishment of such Courts by the Family Courts Act, 1984, observed as follows:

“ 13. The purpose of highlighting this aspect is that in the case at hand the proceeding before the Family Court was conducted without being alive to the Objects and Reasons of the Act and the spirit of the provisions under Section 125 of the Code. It is unfortunate that the case continued for nine

years before the Family Court. It has come to the notice of the Court that on certain occasions the Family Courts have been granting adjournments in a routine manner as a consequence of which both the parties suffer or, on certain occasions, the wife becomes the worst victim. When such a situation occurs, the purpose of the law gets totally atrophied. **The Family Judge is expected to be sensitive to the issues, for he is dealing with extremely delicate and sensitive issues pertaining to the marriage and issues ancillary thereto. When we say this, we do not mean that the Family Courts should show undue haste or impatience, but there is a distinction between impatience and to be wisely anxious and conscious about dealing with a situation. A Family Court Judge should remember that the procrastination is the greatest assassin of the lis before it. It not only gives rise to more family problems but also gradually builds unthinkable and Everestine bitterness. It leads to the cold refrigeration of the hidden feelings, if still left. The delineation of the lis by the Family Judge must reveal the awareness and balance. Dilatory tactics by any of the parties has to be sternly dealt with, for the Family Court Judge has to be alive to the fact that the lis before him pertains to emotional fragmentation and delay can feed it to grow. We hope and trust that the Family Court Judges shall remain alert to this and decide the matters as expeditiously as possible keeping in view the Objects and Reasons of the Act and the scheme of various provisions pertaining to grant of maintenance, divorce, custody of child, property disputes, etc.”**

21. In this regard we observe that a learned Single Judge of this Court after taking note of the contentions of the respondent husband, to the effect, that the subject petition has been delayed for no fault of his, vide said order dated 22.03.2017 had directed the Family Court to dispose off the subject petition expeditiously and, preferably, within a period of 14 months. The

subject petition has been pending for more than four and a half years now from the date of its institution, and for more than eight months from the date of the order of the learned Single Judge. The issues were framed by the Family Court on 01.06.2017. The dates on which the evidence of the respondent husband was recorded before the Local Commissioner and the duration for which it was recorded, are as follows:

S.No.	Date	Start Time	End Time	Nature of Proceedings (Chief or Cross), and duration (hh:mm)
1.	08.08.2017	1:15 P.M.	4:55 P.M.	Chief – 03:40 hours
2.	09.08.2017	1:00 P.M.	6:00 P.M.	Chief – 03:30 hours (approx.). Cross – 01:30 hours (approx.).
3.	10.08.2017	12:00 P.M.	6:20 P.M.	Cross – 06:20 hours
4.	11.08.2017	12:00 P.M.	5:30 P.M.	Cross – 05:30 hours
5.	16.08.2017	1:15 P.M.	8:15 P.M.	Cross – 07:00 hours
6.	17.08.2017	12:30 P.M.	7:00 P.M.	Cross – 06:30 hours
7.	18.08.2017	11:00 A.M.	6:15 P.M.	Cross – 07:15 hours
8.	19.08.2017	11:00 A.M.	4:45 P.M.	Cross – 05:45 hours

22. A bare perusal of the above would show that more than reasonable time was afforded to the appellant wife to cross-examine the respondent husband. Where, the examination-in-chief of the respondent husband was concluded in seven hours (approx.), the cross-examination has continued for forty hours (approx.); and the appellant wife by way of present appeal prays for more time to conclude the same.

23. The plea of the appellant wife in asking for more time to cross-examine the respondent husband has to be considered in the backdrop of her conduct since the first date fixed for recording of evidence i.e. 08.08.2017 till 19.08.2017, when her right to cross-examine the latter was closed, which are evident from her following conduct:

- i. On the first date fixed for recording of evidence i.e. 08.08.2017, the appellant wife pressed for a stay against the recording of evidence of the respondent husband; on the pretext of the pendency an appeal filed by her belatedly in the circumstances against the order of the Family Court appointing a Local Commissioner, without there being any order or stay in the said appeal issued by the appellate Court;
- ii. Then, as noticed by a co-ordinate Bench of this Court vide order dated 11.08.2017, posing irrelevant questions to the respondent husband in his cross-examination; compelling a co-ordinate Bench of this Court to permit the Local Commissioner to disallow all irrelevant questions; and
- iii. Submitting before the Family Court that the cross-examination of the respondent husband will be positively concluded by 19.08.2017 and; contrary thereto now in the present appeal before us, advancing

unfounded and vexatious allegations that the counsel for the appellant was compelled by the presiding Judge of the Family Court to conclude the cross-examination of the respondent husband by 19.08.2017.

24. It is evident that the appellant wife in order to gain time and retard the process of conclusion of recording of evidence of the respondent husband has been resorting to practices, which without touching on the merits of the subject petition are only causing an impediment in the recording of evidence. The conduct of the appellant wife in adopting such dilatory practices amounts to abuse of process of the Court and defeats the command of the legislature, as envisaged in Section 21-B of the said Act, providing for expeditious disposal of the petitions under the said Act.

25. Be that as it may, even otherwise, the filibuster employed by the appellant wife in repeatedly protracting the cross-examination and thereby harassing the respondent husband by delaying the conclusion of recording of evidence, cannot be held to the prejudice of the latter, who despite residing overseas has been vigilantly pursuing the subject petition in order that it is disposed of expeditiously, in accordance with law.

26. In view of the foregoing facts and circumstances elaborated hereinabove, in our view, there is no infirmity in the impugned order dated

19.08.2017; closing the right of the appellant wife to further cross-examine the respondent husband, requiring interference by this Court. The issue struck before us is accordingly answered in the negative, and against the appellant wife.

27. The present appeal is accordingly dismissed. Pending applications also stand disposed of.

28. No order as to costs.

**SIDDHARTH MRIDUL
(JUDGE)**

**DEEPA SHARMA, J
(JUDGE)**

DECEMBER 18, 2017
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