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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1109/2017 & CM No.36278/2017 (for exemption)
ANIL KISHAN Petitioner

Through: None.

Versus

SHASHI GOGIA @ SMRIDHI HANDA Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **10.10.2017**

1. None appears for the petitioner.
2. In the interest of justice, adverse orders are deferred.
3. List on 1st November, 2017.

RAJIV SAHAI ENDLAW, J.

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CM No.36278/2017 (for exemption).

4. Allowed, subject to just exceptions.
5. The application stands disposed of.

CM No.1109/2017.

6. Subsequently, one gentleman claiming to be Mr. Arun Handa brother of the petitioner Anil Kishan has mentioned the matter. He has explained that the petitioner has filed this petition in person and he has been authorised by the petitioner to represent the petitioner and he could not appear in the morning owing to difficulty in finding the Court in which the case is listed.
7. Accordingly, the date of 1st November, 2017 is cancelled and Mr. Arun Handa has been heard.

8. This petition under Article 227 of the Constitution of India impugns the orders dated 31st March, 2017, 27th May, 2017 and 26th July, 2017 in Execution No.147/2016 of the Court of Principal Judge (East) District, Family Court of Vishwas Nagar, Delhi. Vide order dated 31st March, 2017, the petitioner was taken into custody for non-payment of arrears of Rs.1,04,000/- on account of maintenance which the petitioner was ordered to pay to the respondent. Vide order dated 27th May, 2017, it was again provided that on failure of the petitioner to pay the maintenance, he will be taken into custody. Vide order dated 26th July, 2017, the petitioner was directed to appear on 24th August, 2017 for being taken into custody to undergo civil imprisonment for non-payment of maintenance.

9. Mr. Arun Handa has argued that the respondent was never married to the petitioner in accordance with proper ceremonies and customs and the respondent made the petitioner marry the respondent by practising fraud. It is further contended that the petitioner has filed a suit for declaration of marriage with the respondent as null and void and which is pending consideration. It is yet further contended that the petitioner has already withdrawn HMA No.1597/2014 in which the respondent had applied for maintenance under Section 24 of Hindu Marriage Act, 1955 and in which the order for payment of maintenance was made. It is yet further argued that in the execution filed by the respondent, wrong name and address of the petitioner was given.

10. As long as the order of payment of maintenance stands and / or till the petitioner has the same set aside, the petitioner shall remain liable for payment of maintenance and to suffer the consequences for non-compliance

with the order.

11. The remedy of the petitioner is thus to have the order directing him to pay maintenance set aside and not by impugning the order in execution of payment of maintenance.

12. Mr. Arun Handa has also argued that the petitioner has already been in custody several times and has no money to pay.

13 The same does not alter the position.

14. There is no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

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