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

+ **MAT.APP.(F.C.) 176/2017 and CM APPL. 36757-36758/2017**

ANAND RAWAT Appellant

Through: Mr. Sameer Nandwani, Advocate

versus

LALIT SINGH NEGI Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **13.10.2017**

1. The present appeal has been filed by the appellant, brother of Smt. Bharti Negi, who happens to be the wife of the respondent praying *inter alia* for setting aside an order dated 12.09.2017, passed by the learned Principal Judge, Family Court, dismissing an application filed by him under Section 114 read with Section 151 CPC, for recall of the order dated 23.05.2017.

2. Mr. Nandwani, learned counsel for the appellant states that the appellant is the brother of Smt. Bharti Negi. The respondent herein, who is the appellant's brother-in-law, has filed a petition for seeking dissolution of marriage against his wife. The marriage of the aforesaid parties was solemnised at Mehrauli, Delhi on 23.11.2007, whereafter the respondent had proceeded alone to the United Kingdom on 07.07.2008 to work as a Chef. The appellant's sister had remained at her matrimonial home in Delhi. On 31.10.2008, an offspring was born in Delhi. On 26.01.2011, the appellant's sister had left alongwith the girl child to the United Kingdom to join her husband, the respondent herein.

3. It is the version of the appellant that his sister had visited India on 21.03.2012 and thereafter she had gone back to the United Kingdom on 30.04.2012, after a patch-up had taken place between her and the respondent and ever since then, she has been residing in the United Kingdom. In July, 2013, the respondent had returned to India alone, while leaving behind his wife and child in the United Kingdom.

4. Learned counsel for the appellant states that when the divorce petition was filed by the respondent on 05.01.2015, notice was issued to his wife at the residential address of her father and the appellant and the said summons were received by the father on 02.02.2015. It is contended that service of the summons were deliberately sought to be effected by the respondent on the appellant's sister at her parental home, knowing very well that she is continuing to reside in the United Kingdom alongwith their minor daughter. The respondent had even furnished the address of his wife at the United Kingdoms, in the divorce petition.

5. On 29.05.2015, the appellant herein had appeared before the Family Court to apprise the court about the present place of the residence of his sister. Despite the same, the court had directed the respondent/wife in the petition to file the written statement, without directing that fresh service be effected on her at the address of United Kingdom. Learned counsel for the appellant points out that prior thereto, on 02.02.2015, notice had been directed to be issued to the respondent at her United Kingdom address, to be effected through the Ministry of External Affairs, Govt. of India and the respondent had taken steps to file the process fee but the service report was awaited till 29.5.2015.

6. Thereafter, on 06.10.2015, the appellant had filed an application before the learned Family Court under Order V Rule 15 CPC, stating *inter alia* that his sister had been residing all along in the United Kingdom, which fact was to the knowledge of the respondent herein but he has deliberately given the address of his father-in-law for effecting service on his wife and that the said summons were received by the father in normal course, not realising the gravity of the matter and the effect of non appearance by his daughter in the divorce case.

7. Though there is no specific averment made in the present petition to the effect that the appellant's sister is not on talking terms with her father and her brother, such a submission has been made by learned counsel for the appellant before us, who states that efforts shall be made by the appellant to give a written intimation of the pendency of the divorce petition to his sister based in the United Kingdom, so that she can take appropriate steps to defend the case. The only anxiety expressed on behalf of the appellant is that since his father had received the court summons in the matter on behalf of his daughter and thereafter, deeming service on her, the Court has passed an ex-parte order against her on 23.05.2017, due to which she is likely to suffer serious adverse consequences.

8. It is explained by learned counsel that it was in this background that the appellant had filed yet another application on 12.09.2017, under Section 114 read with Section 151 CPC, for seeking recall of the order dated 23.05.2017, whereby his sister was proceeded against ex-parte. By the impugned order dated 12.09.2017, the captioned application filed by the appellant has been dismissed by the learned Family Court, while imposing costs of Rs.20,000/- on him, for wasting the court's time.

9. Counsel for the appellant states that the bonafide attempt of the appellant was to bring on record the fact that his father had erroneously accepted the summons in the divorce petition without realising the serious consequences of non-appearance on the part of his daughter and the fact was sought to be brought to the notice of the Learned Family Court by pointing out that the appellant's sister is permanently residing in the United Kingdom since the year 2011 and had not returned to India after 2012.

10. We have enquired from learned counsel for the appellant as to whether the appellant's sister, (wife of the respondent) has executed a Power of Attorney in his favour, authorizing him to contest the divorce petition on her behalf. The reply is in the negative. Learned counsel submits that as his sister is not on talking terms with him and his father, he does not have any Power of Attorney. He, however, states that efforts shall be made by the appellant to contact his sister through e-mail and other electronic modes so as to inform her about the pendency of the divorce petition filed by the respondent against her and the orders passed therein by the learned Family Court, so that she can seek legal recourse

11. As the next date of hearing fixed before the Family Court is 06.11.2017 and the divorce petition is listed on that date for final arguments, the appellant shall do the needful within one week from today. Counsel for the appellant undertakes that henceforth, the appellant shall not file any application in the pending divorce petition filed by the respondent. His only request is that the costs of Rs.20,000/- imposed under the impugned order, be waived, as the said order is too harsh.

12. In view of the facts and circumstances noted above, the appeal is disposed of at the stage of admission itself by modifying the order dated

12.09.2017 only to the extent that the costs of Rs.20,000/-, imposed on the appellant are waived. The appellant is cautioned to refrain from filing any further applications in the divorce petition instituted by the respondent against his sister. The appellant shall take immediate steps to intimate his sister about the pendency of the divorce petition and file an affidavit alongwith the proof of intimation before the learned Family Court on 06.11.2017. We may note that notice is not being issued in the present appeal to ensure that the divorce petition filed by the respondent and listed before the Family Court, for final arguments on 6.11.2017 does not get delayed as also for the reason that waiver of costs alone as imposed by the Family Court has been prayed for by counsel for the appellant.

13. The appeal is disposed of alongwith the pending applications. A copy of this order be forwarded by the Registry forthwith to the learned Family Court for information.

HIMA KOHLI, J

DEEPA SHARMA, J

OCTOBER 13, 2017

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