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

+ CM(M) 1349/2017

M Petitioner

Through: Mr. Vikas Bhatia, Adv.

versus

K Respondent

Through: None.

CORAM:

HHON'BLE MR. JUSTICE J.R. MIDHA

ORDER

% **29.11.2017**

CM No.43217/2017

Allowed, subject to just exceptions.

CM(M)1349/2017 & CM No.43218/2017

1. The petitioner has challenged the order dated 27th September, 2017 whereby the learned Trial Court granted last opportunity to the petitioner to file the reply to the application under Section 24 of the Hindu Marriage Act subject to cost of Rs.10,000/- and also directed to the petitioner to pay the litigation expenses of Rs.11,000/-.
2. Learned counsel for the petitioner submits that the petitioner did not receive the copy of the application under Section 24 of the Hindu Marriage Act from the respondent and, therefore, he could not file the reply.
3. The impugned order dated 27th September, 2017 has been perused. The order does not reflect any submission having been made by the

petitioner with respect to the non-receipt of the copy and, therefore, this submission cannot be considered at this stage.

4. Learned counsel for the petitioner submits that the notice of the application under Section 24 of the Hindu Marriage Act was issued to the petitioner on 21st April, 2017 for 05th July, 2017 but the same was not served on the petitioner herein. The order dated 21st April, 2017 and 05th July, 2017 have been perused. The hearing of 21st April, 2017 was fixed on 18th March, 2017 in the presence of petitioner as well as his counsel but the petitioner failed to appear on 21st April, 2017 as well as 05th July, 2017. There is no justification for non-appearance of the petitioner on 21st April, 2017 as well as 05th July, 2017.

5. At this stage, learned counsel for the petitioner submits that he will seek the copy of the application under Section 24 of the Hindu Marriage Act from the respondent's counsel or alternatively inspect the record of the Family Court and will file the reply to the application as well as response to the respondent's affidavit of assets, income and expenditure on 30th November, 2017 when the matter is listed before the Family Court. Learned counsel further submits that he would not seek any adjournment for hearing on the respondent's application under Section 24 of the Hindu Marriage Act on 30th November, 2017 before the Family Court. The statement of learned counsel for the petitioner is taken on record.

6. In view of the statement made by the learned counsel for the petitioner, the Family Court shall accept the petitioner's reply to the maintenance application as well as response to the respondent's affidavit of assets, income and expenditure and shall proceed to hear the matter.

7. Learned counsel for the petitioner submits that the respondent is

working/earning and she has filed the Divorce Petition against the petitioner and, therefore, there is no justification for the Family Court to direct the petitioner to pay the litigation expenses to the respondent.

8. Subject to outcome of the petitioner's contention by the Family Court, the petitioner is directed to pay the cost as well as litigation expenses. Needless to say that if the Family Court comes to the conclusion that petitioner is not liable to pay litigation expenses to the respondent, the Family Court shall pass an appropriate order.

9. This petition is disposed of in the above terms.

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

J.R. MIDHA, J.

NOVEMBER 29, 2017
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