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

+ CS(OS) 1723/2008

BABY VARDHA

..... Plaintiff

Through: Mr.Sanjay Kothiyal, Advocate.

Versus

RAVI SHANKAR AGGARWAL

..... Defendant

Through: Mr.Gaurav Gupta with Mr.Omar Hoda and
Mr.N.Nasir, Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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13.11.2018

1. This proceeding under Section 20 of the Hindu Adoption and Maintenance Act 1956 was filed on 19th February, 2001 by the plaintiff, then a minor, through her mother, as an indigent person.
2. The application under Order XXXIII of the Code of Civil Procedure, 1908 (CPC) to sue as an indigent person remained pending and it was allowed only on 13th August, 2008, when the suit was registered and the pleadings therein ordered to be completed.
3. The defendant, who was contesting the proceedings till then, was vide order dated 24th October, 2011 proceeded against *ex-parte* and vide order dated 20th December, 2011, the plaintiff relegated to leading *ex-parte* evidence and the suit posted before the Joint Registrar on 24th January, 2012 for plaintiff's *ex-parte* evidence and before the Court on 3rd February, 2012 for arguments.

4. The plaintiff did not lead *ex-parte* evidence on 24th January, 2012 and sought adjournment and the suit was adjourned to 31st January, 2012 for *ex-parte* evidence of the plaintiff. The plaintiff still did not file any affidavits by way of evidence and did not even appear before the Joint Registrar on 31st January, 2012; though the Joint Registrar was on leave on that date and the proceedings were adjourned to 2nd February, 2012. On 2nd February, 2012, though the plaintiff appeared before the Joint Registrar but without any affidavit of evidence and the proceedings were adjourned to 3rd February, 2012, as already scheduled. On 3rd February, 2012, the plaintiff was again relegated to Joint Registrar for *ex-parte* evidence on 13th February, 2012. By 13th February, 2012 also, neither any affidavit was filed nor the plaintiff appeared and the counsel for the plaintiff sought adjournment and the proceedings were adjourned to 1st May, 2012. On 1st May, 2012, the counsel for the defendant appeared and though could have joined the proceedings, without filing any application, as nothing had transpired, but sought time to file an application. The order dated 1st May, 2012 however records that the plaintiff also was not ready with the evidence on that date either. The proceedings were adjourned to 3rd September, 2012 for *ex-parte* evidence of the plaintiff. The position remained the same on 3rd September, 2012, with no evidence being produced and the proceedings were adjourned to 24th January, 2013. On 24th January, 2013 also, the plaintiff did not lead any evidence and sought adjournment. The said position continued thereafter also, for the last five years and it is not deemed appropriate to burden this order with details of each and every date. Suffice it is to state that ultimately, vide order dated 11th February, 2015, the

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suit was dismissed for non-prosecution. The plaintiff, though had not been leading any evidence, filed an application for restoration and vide order dated 29th November, 2016, the suit was restored and again relegated for plaintiff's evidence. The plaintiff, on 27th March, 2017 also did not lead any evidence and the suit adjourned to 28th August, 2017. No evidence of the plaintiff was recorded on 28th August, 2017 either. The plaintiff had also not deposited the costs imposed for restoration of the suit earlier dismissed for non-prosecution. Accordingly, subject to the plaintiff paying costs of Rs.15,000/-, yet another adjournment was granted for 12th January, 2018.

5. On 12th January, 2018, a new counsel appeared for the plaintiff and sought adjournment. The costs earlier imposed had also not been paid. Notwithstanding the earlier defaults, the matter was adjourned to 2nd May, 2018 for *ex-parte* evidence of the plaintiff. When the plaintiff did not lead any evidence on 2nd May, 2018 either, the plaintiff's evidence was closed. Faced therewith, the counsel for the plaintiff on that date for the first time drew attention to the Practice Direction No.45/Rules/DHC dated 23rd December, 2016 of this Court and requested transfer of the present matter to the Family Court of the concerned District. The matter was adjourned to 3rd August, 2018 for consideration.

6. On 3rd August, 2018, the counsel for the defendant stated that the plaintiff was no longer a minor and had already been married and had a child and without disclosing the said fact, was pursuing these proceedings. It was further stated that the plaintiff had been receiving maintenance under the orders of the Competent Court in the proceedings under Section 125 Cr.P.C. and this suit was in abuse of the process of the Court. The Joint

Registrar, posted the suit before this Court for today.

7. Today, the counsel for the plaintiff seeks adjournment to move an application for transfer of the suit to the Family Court. On enquiry, it is stated that the plaintiff is now 29 years of age, with date of birth of 24th July, 1989 and was married in January, 2017 and is a medical doctor. The counsel is however unable to state, when the plaintiff completed her MBBS course and/or since when the plaintiff has been receiving a stipend and/or salary. Adjournment is sought for the said purpose again. The counsel also states, that on 2nd May, 2018, the Joint Registrar adjourned the proceedings only to determine, in Family Court of which District, the suit had to be transferred.

8. Under the Practice Direction aforesaid, pursuant to the dicta of the Division Bench of this Court in ***Amina Bharatram Vs. Sumant Bharatram*** AIR 2016 Del 171, transfer is not to be made to the Family Court of cases, where the plaintiff has repeatedly defaulted and which are deadwood. The Family Courts of any District are not to be burdened with such deadwood. The plaintiff, after failing to lead *ex-parte* evidence before this Court for the last seven years, cannot, faced with the closure of evidence and consequent dismissal of the suit, be permitted to now keep the Family Courts busy for another decade or so. It is quite obvious that the plaintiff is not in any need of the maintenance sought in this suit and is continuing with this suit only to keep a sword hanging over the defendant.

9. Though, even if the plaintiff has attained majority, would have been entitled to maintenance for the period for which she would have proved her entitlement but the plaintiff having not proved her claim, notwithstanding

ample number of opportunities, there is not option for this Court except to dismiss the suit.

10. Dismissed.

11. I am refraining from imposing costs on the plaintiff.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 13, 2018

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