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

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Date of Decision: 19th July, 2018

+ CM(M) 220/2018 & CM No.7467/2018

S

Through: Mr. Harish Chandra Verma,
Advocate.

..... Petitioner

versus

V

Through: Mr. Rajesh Kumar Chaurasia,
Advocate.

..... Respondent

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T (O R A L)

1. The petitioner has challenged the order dated 05th December, 2017 whereby the learned Family Court dismissed the petitioner's application under Order IX Rule 7 of the Code of Civil Procedure to set aside the *ex-parte* proceedings along with the application under Section 5 of limitation Act. The petitioner has also challenged the order dated 08th February, 2017 whereby the learned Family Court imposed the cost of Rs.20,000/- to set aside the *ex-parte* proceedings. The petitioner has also challenged the order dated 12th April, 2017 whereby the learned Family Court closed the petitioner's evidence and fixed the case for *ex-parte* arguments.

2. Learned counsel for the petitioner submits that the respondent is not paying any maintenance to the petitioner, despite maintenance order dated 10th May, 2018. It is submitted that the petitioner has no means to pay the

cost. The petitioner seeks setting aside the *ex-parte* order. It is submitted that the petitioner will not delay the proceedings and petitioner will not seek any unnecessary adjournment in the proceedings.

3. In *A. v. T.*, 2018 SCC OnLine Del 9395, this Court has held that filing of the written submissions is a very valuable right and it should not be closed in undue haste. The relevant portion of the said judgment is reproduced hereunder:

“7. This Court is of the view that it is the duty of the Courts to search the truth and then do justice; this is the very object for which Courts are created. The Courts have to remove chaff from the grain to separate falsehood from truth. The matrimonial litigation begins with parties mounting claims on each other, which are often exaggerated and are magnified to such an extent that the truth and falsehood become so inextricably mixed up, that it is difficult, if not impossible, to separate them.

8. It becomes even more difficult to find the truth if the right to file the written statement or the right to lead evidence or right of cross-examination of any witness is closed in undue haste. Therefore, in matrimonial litigations, the Family Courts should take due care and caution in closing the valuable right to file the written statement or to lead the evidence or the right of cross-examination of any witness.

9. In *Gajanan Laxman Bhalchandra v. Rangrao Amrutrao Deshpande*, 1980 Mah LJ 821, the Division Bench of the Bombay High Court observed as under:-

“The very weapon of cross-examination would stand scuttled. Cross-examination is not a mere continuation of examination-in-chief nor is it in all cases and circumstances supposed to fall within the routine strait-jacket formula as of examination in chief. Indeed, to the contrary. It is a very effective instrument and a powerful searchlight to draw out the truth and further the cause of justice. Its object inter

alia is to impeach the very credit of the concerned witness and shake his entire testimony.”

(Emphasis Supplied)

10. In *Nandram Khemraj v. State of Madhya Pradesh*, 1995 Cri.L.J.1270, the Madhya Pradesh High Court noted that weapon of cross-examination is a powerful weapon by which the defence can separate truth from falsehood piercing through the evidence given by the witness, who has been examined in examination-in-chief. The relevant portion of the said judgement is reproduced herein under:

“It is to be noted at this juncture that weapon of cross-examination is a powerful weapon by which the defence can separate truth from falsehood piercing through the evidence given by the witness, who has been examined in examination-in-chief. By the process of cross-examination the defence can test the evidence of a witness on anvil of truth. If an opportunity is not given to the accused to separate the truth from the evidence given by the witness in examination-in-chief, it would be as good as cutting his hands, legs and mouth and making him to stand meekly before the barrage of statements made by the witnesses in examination-in-chief against him for sending him to jail. Law does not allow such thing to happen.”

(Emphasis Supplied)”

4. In the facts and circumstances of this case, the petition is allowed and the impugned orders dated 05th December, 2017, 08th February, 2017 and 12th April, 2017 are set aside. The ex-parte proceedings against the petitioner are set aside.

5. The petitioner shall file the written statement along with the documents relating to this case within her power and possession as well as the admission/denial of the respondent's documents on affidavit on the date fixed i.e. 21st August, 2018 with advance copy to counsel for the respondent

who shall file the replication as well as affidavit of admission/denial of the documents of the petitioner before the Family Court within thirty days of the receipt of the copy of the written statement.

6. The Family Court shall expedite the hearing of the divorce petition and shall not grant any unnecessary adjournment to the parties.

7. Pending applications are disposed of.

8. Record of the Family Court be returned back.

9. Copy of this judgment be given *dasti* to counsels for the parties under signatures of the Court Master.

JULY 19, 2018

ds

J.R.MIDHA, J.

