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

% *Date of Judgment: 16th August, 2018*

+ **MAT.APP.(F.C.) 42/2018**

SANGEETA GERA Appellant

Through **Mr. Aman Mehta, Advocate**

versus

SANJEEV GERA Respondent

Through **Mr. Rishi Kapoor and Mr. Satish Rai,**
Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

CM.APPL32700/2018(early hearing), CM.APPL 6672/2018(delay) & MAT.APP.(F.C.) 42/2018

1. This is an application filed by the appellant seeking early hearing. The application was listed on 14.08.2018. Learned counsel for the appellant had submitted that since the appellate court has fixed the matter for final hearing on 10.09.2018, the matter be taken up on an earlier date. Accordingly, notice was issued to the respondent through counsel. We may note that the present appeal is directed against the order dated 23.11.2017 passed by the Family Court. Together with the appeal, an application being CM.APPL 6672/2018 has been filed seeking condonation of 54 days delay in filing the appeal.

2. With the consent of the parties, this application being CM.APPL 6672/2018 seeking condonation of delay is taken up for hearing at the first instance. The delay is sought to be condoned on the ground that the order dated 23.11.2017 was passed by the Family Court and thereafter the matter was being taken up and listed on day to day basis for carrying out cross-examination of PW-1 and thereafter, the appellant was constrained to change the counsel. The new counsel applied for certified copies on 08.12.2017, which was made available on 24.01.2018. It has also been averred that the delay in filing the present appeal was neither deliberate nor intentional, but due to above reasons.
3. Mr.Kapoor, learned counsel for the respondent has opposed the application on the ground that sufficient cause has not been disclosed for the condonation of delay. Mr. Kapoor submits that the appellant was quick enough to assail the order on 06.12.2017 within a span of seven days, but could not assail the order subject-matter of the present appeal. Mr. Kapoor submits that the sole aim and objective of the appellant is to delay the outcome of the petition seeking divorce which is, in fact, listed for final hearing today before the Family Court. He submits that the application lacks bona fides and thus, is liable to be dismissed. Reliance is placed by Mr. Kapoor on the judgments in the case of *Nawab Mir Barkat Ali Khan Waleshan Bahadur v. Princess Manolya Jah, Dulkadir Sokak, Adali Cikmazi No.9, Arnavutkoy, Istanbul, Turkey & Another*, reported at 2018 SCC Online Hyd 236 and *Preeti Jain v. Kunal Jain and Another*, reported at AIR 2016 Rajasthan 153.

4. Mr. Mehta, learned counsel for the appellant explains that the subsequent order was challenged as by that time, he had been engaged in the matter and had access to the complete record of the case. He submits that since the Family Court had granted one week's time for release of the amount, therefore he had to approach this Court expeditiously.
5. We have heard the learned counsels for the parties and carefully examined the application seeking condonation of delay.
6. The delay is sought to be condoned firstly, on the ground that the matter was being listed on day to day basis for carrying out cross-examination of PW-1. The second ground is change of counsel, who applied for certified copies on 08.12.2017. We find that none of the grounds would amount to sufficient cause for condonation of delay in filing the present appeal. The application is devoid of any particular as to when the new counsel was appointed and as to why the counsel appearing earlier did not choose to challenge the order in case the appellant was so aggrieved.
7. We have, however, also examined the matter on merits. The complaint of the appellant is that an unsigned document in the absence of the original being available has been exhibited by the Family Court. Attention of this Court is drawn to the cross-examination of PW-2 Renuka Singh, Inspector, UP Police, who had admitted that the closure report does not contain her signatures. Mr. Mehta submits that based on the admission that the documents does not contain her signatures, the same is a forged and fabricated document. He submits that the submission made by Mr. Kapoor during the hearing of this appeal that

Section 14 and 20 of the Family Court Act would apply, is not correct. He submits that the Rules of Indian Evidence Act would not apply and no benefit would accrue to the respondent for the reasons that while taking the objection, the Family Court did not invoke either of the two Sections.

8. We find no force in the submissions made by the counsel for the appellant. The examination-in-chief of PW-2 reads as under:

“I was incharge of the Woman Cell, in Sector 14A, Noida UP with w.e.f. 2005-2008 and also from 2013-2016. I have seen the photocopy of the closure report which was prepared and typed by me and the same is Ex.PW-2/A(objected to on the ground that neither the original closure report nor its certified copy is on the record). ...”

9. Relevant portion of her cross-examination is also extracted as under:

“I have not brought the original report lodged by Sangeeta Ghera in our office. I had called both the parties by sending appropriate notices for an inquiry into the complaint. It is correct that I have not brought the original record of such notices. I cannot say if the original record of the inquiry would be available in the department or not as I have not posted there at present. I have prepared the notesheet of the investigation. I had not filed any notesheet of the proceedings alongwith my closure report. Vol. As the same was not required by law.

It is correct that the closure report Ex.PW-2/A is not signed by me. Vol. We ordinarily sign such reports and it might be that the original contains such signatures and it is not visible on the photocopy. Apart from the parties, I had also made inquiries from neighbours and few others but after 12 years I do not recall their names. I do not remember if any statement of such persons was recorded. It is wrong to suggest that I had not made any independent inquiries nor I had recorded any statement of the parties....”

10. Reading of the examination-in-chief would show that PW-2 Renuka Singh, Inspector, UP Police has categorically deposed that she was in-charge of the Women Cell in Sector 14A, Noida UP and had seen the photocopy of the closure report, which was prepared and typed by her (Emphasis added). In her cross-examination, she testified that it was correct that the closure report was not signed by her but she volunteered to say that ordinarily such reports are signed and admitted and the original may contain her signatures.
11. Sections 14 and 20 of the Family Courts Act, read as under:
- “14. Application of Indian Evidence Act, 1872.**-A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872 (1 of 1872). ”
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- “20. Act to have overriding effect.**—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”
12. Reading of Section 14 makes it abundantly clear that the Family Court may receive as evidence any report, statement, documents, information or matter that may in its opinion would assist it to deal effectually with the dispute.
13. The present case is on a much better footing as the PW-2 has admitted that she prepared and typed the closure report, thus to say that the closure report is false and fabricated is an argument without any force.

Accordingly, we find no infirmity with the order passed by the Family Court.

14. Resultantly, the appeal and the applications are dismissed.
15. The date 10.09.2018 stands cancelled in view of the orders passed in the appeal.

CM.APPL6671/2018(stay)

16. The application also stands dismissed in view of the orders passed in the appeal.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

AUGUST 16, 2018
pst