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

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Date of Decision: 04th July, 2018

+ CM(M) 274/2018

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..... Petitioner

Through: Mr.Prag Chawla, Sudeep Sudan and
Mr.Puneet Jain, Advocates

versus

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..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The petitioner instituted a petition for dissolution of marriage against the respondent under Section 13(1)(ia) and (ib) of the Hindu Marriage Act on 12th January, 2015 in which the Family Court issued the notice to the respondent on 14th January, 2015.

2. On 5th January 2016, the petitioner filed an application under Order V Rule 9 of the Code of Civil procedure for serving the respondent by e-mail which was allowed by the Trial Court and Court issued notice by e-mail as well as by Courier.

3. The petitioner served the respondent by e-mail at the e-mail address, aviseth@gmail.com and the certificate under Section 65B of the Indian Evidence Act along with computer printouts of the e-mails were filed by the petitioner before the Family Court on 30th March, 2016. The petitioner also

placed on record the courier receipts as well as tracking report of courier service, according to which the notice was delivered to the respondent on 28th July, 2016 at 12:31 hours.

4. On 07th November, 2016, the learned Family Court proceeded *ex-parte* against the respondent and fixed the case for recording of the *ex-parte* evidence on 31th January, 2017.

5. On 17th April, 2017, the petitioner submitted the *ex-parte* evidence and the case was listed for *ex-parte* arguments on 5th June, 2017.

6. On 5th June, 2017, there was change in the Presiding Officer of the Family Courts. The new Presiding Officer vide order dated 28th August, 2017 reopened the service of the respondent and directed the petitioner to file the affidavit of service which was filed by the petitioner on 22nd September, 2017. On 22nd September, 2017, the learned Family Court issued Court notice to the courier service i.e. M/s DTDC Express Ltd. to prove the tracking report.

7. Learned counsel for the petitioner submits that the respondent had been duly served and the learned Family Court preceded *ex-parte* against the respondent after satisfying the service of the respondent. It is further submitted that there was no occasion for the Family Court to reopen the issue of service at the stage of final arguments.

8. The records of the Family Court have been perused. This Court is of the view that the respondent has been duly served before the Family Court and the Court notice issued to the courier service by the Family Court was not warranted.

9. The petition is allowed and the order dated 22nd September, 2017 of the Family Court is hereby set aside.

10. The Family Court shall fix the case for final arguments.
11. Considering the delay of about 10 months by the Family Court, the Family Court is directed to expedite the hearing of the divorce petition.
12. Copy of this judgment be given *dasti* to counsels for the parties under the signature of Court Master.

JULY 04, 2018
ds

J.R.MIDHA, J.

