

\$~35

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **TR.P.(C.) 130/2018 & CM APPL. 28379/2018**
RAVINDRA Petitioner
Through: Ms. Sudershani Ray, Advocate.

versus

RUBY CHAUHAN Respondent
Through:

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER
% **20.07.2018**

CM APPL.28380/2018 (Ex.)

Exemption allowed subject to all just exceptions.

The application is disposed of.

TR.P.(C.) 130/2018 & CM APPL. 28379/2018

Vide the present petition which is a petition under Section 24 read with 151 of the CPC, 1908, the petitioner seeks the transfer of HMA No.2/16 titled as “**Sh. Ravindra Pratap Singh Tomar Vs. Smt Ruby Chauhan**”.

Learned counsel for the petitioner submits that it is a divorce petition filed by the petitioner against the respondent and that it has also been submitted that in the prayer clause at page 9 of the present petition, it has been erroneously mentioned to the effect that the maintenance petition bearing no.2/16 pending before the Principal Judge, Family Court, KKD be transferred in another Court and that it

ought to be read as a divorce petition no. 2/16 pending before the said Court as has been appropriately mentioned in the application CM.No.28379/18. In the interest of justice, the application is thus treated to be as a petition seeking transfer of the divorce petition no.2/16 presently pending in the Court of the Principal Judge Family Courts, KKD Courts.

Vide the present petition, the petitioner seeks to submit that though the respondent chose not to file the reply within the stipulated period of time of 30 days and the petitioner herein sought the forfeiture of the right of the respondent to file the written statement, the matter was adjourned to 17.01.2017 and on 17.01.2017, the petitioner went to the Court where it was apprised that the matter was adjourned to 16.01.2017 and on inspection it was discovered that the respondent was not present on the said date and significantly through this paragraph 4 it has not been stated by the petitioner that the proceedings sheet reflected that the matter was not fixed for 16.01.2017. Furthermore, it has been submitted through the petition that the learned Court granted an opportunity to the respondent to file the written statement after a span of eight months, i.e., the last opportunity was granted and when the respondent chose not to file the written statement, on 19.02.2018 the petitioner herein filed an application under Order VIII Rule 10 of the CPC seeking closure of the right of the respondent to file the written statement and the learned Principal Judge, Family Court closed the filing of the written statement.

The said submission itself is an indicator that it cannot be contended on behalf of the petitioner that the petitioner is not heard as is sought to be submitted during the course of the present proceedings now. A further submission is made through the present petition on behalf of the petitioner that on 12.04.2018, an application under Section 151 of the CPC was filed by the respondent seeking the setting aside of the order, i.e., the closure of the written statement that the petitioner opposed the application and requested for filing a reply to the same but despite the same, the learned Principal Judge, Family Court failed to consider the same and passed an order allowing the application imposing cost of Rs.1,000/- and the petitioner thus submits that the application under Section 151 of the CPC not being maintainable ought to have been decided under Section 115 of the CPC and that the learned Principal Judge, Family Court had erred and passed such an order which was bad in law and thus that the petitioner has lost trust and faith in the learned Trial Court and seeks the transfer of the proceedings.

It is essential to observe that in the event of the petitioner being aggrieved by the orders of the learned Trial Court qua the aspect of the grant of a further opportunity to the respondent to file the written statement or qua the aspect of an exercise of power *de hors* Section 115 of the CPC, it was open to the petitioner to have sought redressal in accordance with law in relation thereto but not the filing of the transfer petition on this premise to contend that the petitioner had lost

trust and faith in the Trial Court.

The petition is devoid of all merit and is declined.

ANU MALHOTRA, J

JULY 20, 2018/NC