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

+ CM(M) 870/2018

DIMPLE SHARMA

..... Petitioner

Through: Ms. Ritika Jhurani, Mr. Dinesh
Sharma & Ms. Kritika Khanna, Advs.

Versus

VIPIN SHARMA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **01.08.2018**

CM No.30662/2018 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CM(M) 870/2018 & CM No.30661/2018 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order [dated 16th July, 2018 in HMA No.398/2017 of the Judge, Family Court, South-East].
4. Vide the said order, a Commissioner was appointed to record evidence, the fee of the Commission ordered to be borne equally by the parties and observing that neither party had filed any list of witnesses, it was ordered that the parties would be entitled to examine themselves only and no other witnesses.
5. The first argument of the counsel for the petitioner / wife, who is the respondent in the petition for dissolution of marriage filed by the respondent / husband before the Family Court, is that the opportunity to examine other witnesses has been closed.

6. I have enquired from the counsel for the petitioner / wife, whether any list of witnesses was filed.
7. The answer is in the negative.
8. Issues are claimed to have been framed by the Family Court on 19th February, 2018 and the list of witnesses was required to be filed within 15 days thereof.
9. The petitioner / wife, though having herself defaulted in filing list of witnesses and having also not made any application before the Family Court for condonation of delay in filing list of witnesses, has chosen to file this petition to get over her own fault.
10. Even today, the counsel for the petitioner / wife is unable to name the witnesses sought to be examined, though states two or three witnesses are to be examined.
11. However, it is felt that the Family Court, while closing the right of the petitioner / wife to examine any other witnesses, has lost sight of the fact that even in the absence of list of witnesses, it was open to the petitioner / wife under Order XVI Rule 1A of Code of Civil Procedure, 1908 (CPC) to, on her own, produce any witness for examination in support of her case.
12. In the aforesaid circumstances, for redressal of the said grievance of the petitioner / wife, it is not deemed appropriate to issue notice, thereby causing delay in disposal of the proceedings before the Family Court. It is felt that the purpose will be served by permitting the petitioner / wife to, by tomorrow, file before the Family Court the list of not more than three witnesses to be examined, with advance copy to the opposite counsel, but on the condition that the petitioner / wife will produce the said witnesses on her own responsibility and will not be entitled to summon any of the said

witnesses.

13. The second grievance of the petitioner / wife in this petition is that the arrears of maintenance were not got recovered from the Family Court and on 16th July, 2018 also the respondent / husband paid only a sum of Rs.5,000/- when the arrears were in the sum of Rs.25,500/-.

14. There is nothing in the order dated 16th July, 2018 to indicate that the counsel for the petitioner / wife brought the said fact to the notice of the Family Court or pressed the same before the Family Court. No application also in this regard is stated to have been filed.

15. The petitioner / wife again, for her own faults, cannot be permitted to approach this Court straightaway instead of invoking the jurisdiction of the Family Court for recovery thereof.

16. Again, for the said grievance, it is not deemed necessary to issue notice and the petitioner / wife shall be at liberty to approach the Family Court in this regard.

17. The last grievance of the petitioner / wife with respect to the impugned order is that the petitioner / wife has also been made to share the cost of the Commission issued for recording of evidence.

18. Yet again, no submission in this regard is found to have been made before the Judge, Family Court on 16th July, 2018 and even thereafter no application was made to the Family Court in this regard.

19. The petitioner / wife cannot for the first time raise her grievance invoking Article 227 of the Constitution of India.

20. Again, liberty is given to the petitioner / wife to approach the Family Court in this respect and it is expected that the Family Court will pass a reasoned order on the grievance aforesaid of the petitioner / wife. Attention

of the Family Court is however invited to the dicta of this Court in ***H. Dohil Constructions Co. Vs. Rohit Lal*** AIR 2014 Del 195 holding that the Commission for recording of evidence cannot be issued if either of the parties' objects to bearing the costs thereof.

21. It is also worthwhile to mention that once the petitioner / wife has been ordered to be paid maintenance, it is unfair to put the burden of the Commission on her.

22. With the aforesaid, the petition is disposed of.

Dasti under signature of Court Master.

RAJIV SAHAI ENDLAW, J

AUGUST 01, 2018

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