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

+ MAT.APP.(F.C.) 257/2018

SUBASH SHARDA

..... Appellant

Through

Mr. Maninder Singh and Mr. Mukul
Tomar, Advocates

versus

LEENA SHARDA

..... Respondent

Through

Nemo

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

O R D E R

% **08.10.2018**

CM.APPL 41727/2018 (Exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

MAT.APP.(F.C.) 257/2018 & CM.APPL 41728/2018(stay)

Challenge in this appeal is to the order dated 03.08.2018 passed by the Family Court, by which an application filed by the appellant herein seeking recall of the order dated 06.01.2017 by which he was proceeded ex parte, was dismissed.

Learned counsel for the appellant submits that the appellant was not duly served. The first service report relied upon by the Court is of refusal, whereas admittedly, the appellant was not residing at the said address. He further submits that he gained knowledge of the proceedings on 28.06.2017, but he was not aware that he had been proceeded ex parte and it is only subsequently when he learnt that he has been proceeded ex parte, that he filed an application on 03.08.2018, which was the date of hearing before the Family Court. He further submits that although the Family Court did ask the appellant to pay maintenance, but he rightly declined to do so, as according to him, the respondent is earning more than the appellant. He submits that the respondent

has approached the Court with uncleaned hands and her petition is likely to be dismissed. He further submits that the amount of maintenance awarded in the sum of Rs.14,000/- in proceedings pending filed by the respondent seeking a decree of divorce under Section 24 of the Hindu Marriage Act has also not been paid for the reason that he is likely to file an appeal against the same. He further submits that while granting anticipatory bail, the learned ASJ also directed payment of Rs.25,000/-, but he has not paid the same as he has filed an appeal.

We have heard the learned counsel for the appellant. We find no infirmity in the order passed by the Family Court for the following reasons:

- (i) Prima facie, upon examining the service report of the process server, it shows that the appellant had refused the service;
- (ii) The appellant has admitted that he gained knowledge of pendency of the proceedings on 28.06.2017, but there is no satisfactory explanation for the delay in filing the application which was filed on 03.08.2018;
- (iii) The respondent is bringing up a 05 years old child and till date not a penny has been offered by the appellant as maintenance, although, the learned counsel for the appellant has submitted that the respondent is earning more than the appellant. Even if this submission of the learned counsel for the appellant is correct, that itself does not deprive the child of the maintenance by the father; and
- (iv) We also find that while granting bail, the learned ASJ had directed payment of Rs.25,000/- which has not been paid. In proceedings under Section 24 of the Hindu Marriage Act, the Family Court awarded a sum of Rs.14,000/- per month which has also not been paid.

We find no merits in the appeal. It is, accordingly, dismissed with a cost

of Rs.5,000/- to be deposited in the Army Relief Fund.

The application (CM.APPL 41728/2018) also stands dismissed in view of the order passed in the appeal.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

OCTOBER 08, 2018

pst /
MAT.APP.(F.C.) 257/2018