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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 1327/2018 & CM APPL. 45629/2018**

JITIN GULATI

..... Petitioner

Through: Mr. A.K. Singh, Sr. Advocate with
Mr. Sanjeev Kumar, Mr. Ram Kamal,
Advocates.

versus

SHWETA GULATI

..... Respondent

Through: Mr. Anunaya Mehta, Advocate.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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31.10.2018

CM APPL. 45631/2018 (Ex.)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

CM(M) 1327/2018 & CM APPL. 45629/2018

Vide the present petition, the petitioner assails the impugned order dated 25.10.2018 of the Court of the learned Principal Judge, South Family Courts, Saket, New Delhi whereby the petitioner herein was proceeded *ex parte* inasmuch as the petitioner was not present, the petitioner herein being arrayed as the respondent in HMA Petition bearing No.386/2013 on which date the matter was fixed for the petitioner's evidence and despite an attempt having been made by the learned counsel for the petitioner to speak to the counsel for the

respondent, it was not possible to speak to the counsel for the respondent and the learned Principal Judge-South, Family Courts, Saket observed to the effect that proceedings dated 22.10.2018 indicated that the petitioner herein i.e. the respondent to the said proceedings was absenting himself and had not chosen to appear even on the dated 23.10.2018 inasmuch as, as submitted on behalf of either side that the date 23.10.2018 was also fixed for petitioner's evidence.

It was also observed vide the impugned order dated 25.10.2018 by the learned Principal Judge-South, Family Courts, Saket to the effect that directions had been passed by this Court vide order dated 17.04.2018 for an expeditious disposal and that the matter pertained to the year 2013. It was observed also vide the impugned order that the respondent to the said petition i.e. the petitioner herein was playing hide and seek with the Court and was thus proceeded *ex parte* and the petitioner's evidence was recorded and her evidence was closed reserving her right to file the certified copies of Court proceedings in relation to FIR No.408/13, PS Safdarjang Enclave and the certified copy of complaint dated 09.05.2012 with the matter having been listed for *ex parte* arguments for the date 15.11.2018. It has been submitted on behalf of the petitioner that the petitioner could not put in appearance before the learned Trial Court on the date 25.10.2018 nor the counsel put in appearance inasmuch as the petitioner had filed a transfer petition before the Hon'ble Supreme Court which was taken up on the date 25.10.2018 and it was only after the proceedings in relation thereto that the counsel for the

petitioner could put in appearance before the learned Trial Court only to learn that the petitioner had already been proceeded *ex parte*.

Placed on record is the order dated 25.10.2018 of the Hon'ble Supreme Court in Transfer Petition (Civil) no.1706/18 which shows the presence of the learned counsel Mr. Dinesh Kumar Tiwari before the Hon'ble Supreme Court on the date 25.10.2018 and it is the said counsel to whom the counsel for the petitioner of HMA Petition no.386/13 as per the proceedings dated 25.10.2018 had attempted to speak to at the directions of the learned Trial Court and informed that Mr. Dinesh Kumar Tiwari was not attending the calls of the counsel for the petitioner of the HMA Petition no.386/13 which apparently is understandable in view of the proceedings dated 25.10.2018 in Transfer Petition (Civil) No.1706/18 pending before the Hon'ble Supreme Court.

Learned counsel for the respondent however submits that though the said aspect may be taken into account, the previous conduct of the respondent in continuous absence before the learned Trial Court also needs to be taken into consideration. It is essential to observe that the petitioner having been proceeded *ex parte* on the date 25.10.2018 with the closure of the evidence of the petitioner of the HMA petition on the said date, for the consideration of the prayer made on behalf of the petitioner of the present petition seeking setting aside of the *ex parte* proceedings dated 25.10.2018, it is the conduct and the absence of the petitioner on the date 25.10.2018 before the learned Trial Court, it would have to be taken into account.

Taking the same into account the absence of the petitioner on the date 25.10.2018 before the learned Principal Judge-South, Family Courts, Saket in HMA Petition no.386/13 which is apparently explained by the presence of the counsel for the petitioner before the Hon'ble Supreme Court in Transfer Petition (Civil) 1706/18 on the said date, it is considered appropriate in the interest of justice to set aside the *ex parte* proceedings initiated against the petitioner herein in HMA Petition no.386/13 vide the order of the learned Principal Judge-South, Family Courts, Saket.

The petition is disposed of accordingly.

Copy of this order be sent to the learned Trial Court.

ANU MALHOTRA, J

OCTOBER 31, 2018/NC