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

+ MAT.APP.(F.C.) 295/2018

DEEPA NEBHNANI GROVER

..... Appellant

Through: Mr.Prashant Mendiratta and Ms.Malvika
Choudhary, Advocates

versus

AJAY GROVER

..... Respondent

Through: Ms.Geeta Luthra, Sr.Adv. with Mr.Rupinder
Ghuman and MrPranav Vashishtha, Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

O R D E R

% **13.11.2018**

C.M.47019/2018 (Exemption)

Exemption is allowed subject to just exceptions.

Application stands disposed of.

MAT.APP.(F.C.) 295/2018 & C.M.47018/2018 (stay)

Challenge in this appeal is to the order dated 04.10.2018 by which an application filed by the appellant herein raising an objection with respect to transfer of the present matter from the court of Mr.Arun Kumar Arya, (since retired) to the court of another Family Judge has been dismissed. The Family Court had passed the following order on 01.08.2018:

“01.08.2018

File received by way of transfer as Reader has brought the file submitting that both the parties have started fighting in the Court and respondent has raised all sorts of allegation against the staff and thereafter, the respondent left the Court.

Present: Sh.Rupinder Ghuman, counsel for the petitioner.

None for respondent.

Counsel for the petitioner submits that counsel for the respondent didn't appear but despite this, they started fighting and have now left the Court. In such circumstances, this case is transferred to this Court. It be checked and registered.

List the matter for replication, document/admission/denial & issues as well as for arguments on the application U/s 24 of HMA on 23.08.2018.”

Copy of the order has been supplied in Court as the same does not form part of the paper book.

Aggrieved by the aforesaid order dated 01.08.2018, an appeal being MAT.APP.(F.C.) 237/2018 was filed by the appellant wherein the following order was passed by this Court:

“Caveat Pet. 878/2018

1. Ms. Geeta Luthra, Sr. Advocate, on instructions, has put in appearance.

2. Caveat petition stands discharged.

CM APPL 38755/2018 (exemption)

3. Exemption is allowed, subject to all just exception.

4. The application stands disposed of.

MAT.APP.(F.C.) 237/2018

5. Challenge in this appeal is to the orders dated 01.08.2018 and 23.08.2018.

6. Learned counsel for the appellant submits that reading of order dated 01.08.2018 would show that on the basis of information received from the reader that both the parties have started fighting in the Court and the appellant has raised all sorts of allegation against the staff and thereafter, the appellant left the Court, the Judge, Family Court, South East took up the matter by transferring the same to herself.

7. Mr. Mehdiratta, counsel for the appellant submits that firstly the matter could not have been transferred by the Judge, Family Court, secondly, not at the instance of the reader and thirdly without ascertaining the facts from the appellant herein (respondent before the Family Court) and in the absence of the counsel for the respondent (appellant herein). He submits that the observations regarding allegations etc. made in the order dated 01.08.2018 has caused serious prejudice to the rights of the appellant herein. Counsel for the appellant further submits that on the subsequent date of hearing, the appellant herein filed an application raising objections against transfer of the present case. The Family Judge without deciding the application, framed the issues and passed further directions. Counsel contends that in case, it is held that the order of transfer is bad then the subsequent directions issued by Family Court would also be bad.

8. Notice. Ms. Geeta Luthra, learned senior counsel on

instructions from Mr. Rubinder Ghuman accepts notice.

9. Ms. Luthra, counsel for the respondent submits that the matters are transferred in a routine manner and there is no infirmity in the order of the Family Court. However, Mr. Mehdiratta, counsel for the appellant, has handed over a copy of the order dated 13.03.2018 passed by Family Court in another matter being HMA 545/2018 (Soni Agarwal Vs. Vikas Khokha), which is reproduced below, to show that the matters are not transferred in routine :

“Learned counsel for the applicant submits that the present case be transferred to this court as the court of Principal Judge, Family Court, South East District, Saket, New Delhi is lying vacant for last more than 2 months and there is urgency in the matter.

Regarding the urgency, counsel for the applicant submits that in this case respondent is exparte and the petitioner has come from Bangalore. Therefore, the case be transferred to this court.

It may be mentioned that there are about 1700 cases pending in the court of Principal Judge, Family Court, South East District, Saket, New Delhi. This court cannot order for transfer all these cases to this court and vacate that court. Ultimately, a Principal Judge shall be appointed by the Hon’ble High Court and he cannot be expected to preside over the vacant court. There are about 4-5 oral requests for transfer of the cases to this court made by the parties and their counsels and daily the court is declining such requests. It is only the mutual consent petitions or the petitions where the applications have been moved for the withdrawal of the petition that the cases are being transferred to this court on the directions of the undersigned but the other requests are declined daily. Now, only one question has been asked from the counsel for the applicant i.e. “Why this case only be transferred to this court, when the requests of others have been declined”, to which learned counsel for the applicant has not been able to reply satisfactorily. No ground for transfer of the case to this court. The application is dismissed.

Copy of this order be given Dasti to the petitioner.
Application be consigned to record room.”

10. Without expressing any opinion on the merit of the

matter in our view propriety demands that the application filed by the appellant raising objections with regard to transfer should have been decided at the first instance by the Judge, Family Court, and only thereafter, should have proceeded to frame the issues and pass further directions. Accordingly, order dated 23.08.2018 is set aside. We request the Judge, Family Court, to decide the application filed by the appellant with respect to transfer at the first instance.

11. With these directions the appeal stands disposed of.

12. At this stage, counsel for the parties wish to explore the possibility of an amicable settlement.

13. List the matter for directions before the Regular Bench on 27.09.2018 when the parties are directed to remain present. The matter would be taken up post lunch.

14. We make it clear that pendency of the matter will not come in the way of the Family Court while deciding the application filed by the appellant.

CM APPL 38754/2018 (stay)

15. In view of the order passed in the appeal, the application stands disposed of.

16. Copy of order be given *Dasti* to the parties under signature of the Court Master.”

In compliance with the order dated 20.09.2018, the Family Court has decided the application filed by the appellant herein and rejected the same.

Without entering into any controversy, although allegations and counter allegations have been made, as agreed by the counsels appearing for the parties, the matter shall stand transferred to the successor court of Mr.Arun Kumar Arya where the matter was initially pending from the stage, at which the matter is pending in the present Court.

With the above directions, the appeal stands disposed of.

G.S.SISTANI, J.

JYOTI SINGH, J.

NOVEMBER 13, 2018/rb/
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