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

+ CM(M) 186/2019

RAJEEV KATYAL

..... Petitioner

Through : Mr.Anuj Kapoor and Ms.Kriti
Kapoor, Advocates.

versus

EKTA KATYAL & ANR

..... Respondents

Through : None.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **01.02.2019**

CM APPL No.4935/2019

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CM(M) 186/2019 & CM APPL No.4934/2019

1. This petition assails an order dated 21.12.2018 passed by the learned Judge, Family Courts, Shahdara District, Delhi (hereafter 'Trial Court') in CC No.110/2017 titled *Ektaa Katyal and Another vs Rajeev Katyal* whereby the application under Order IX Rule 7 CPC was rejected.

2. Before coming to the impugned order, let me state few facts. The petitioner and respondent got married in the year 2000 and a child was born to them in the year 2001. However, the couple could not live together and in May 2009 the respondent started living separately. In the year 2010 the respondent filed a divorce petition under Section 13 (1) (i-a) of the Hindu Marriage Act, 1955 (hereafter 'HMA'). There was mediation in July 2010 between the parties and a settlement was arrived between them on 07.08.2010. In March

2013, an application under Section 24 of HMA was filed by the respondent which was withdrawn on 26.11.2016. However, in December, 2016 yet again another application under Section 125 Criminal Procedure Code (hereafter 'Cr P C') and under Section 24 HMA was filed by the respondent. The petitioner was proceeded *ex parte* vide order dated 03.05.2018.

3. The petitioner along with new counsel appeared before the learned Trial Court on 07.06.2018 but filed an application under Order IX Rule 7 CPC read with Section 5 of the Limitation Act only on 26.09.2018 for setting aside the *ex parte* order dated 03.05.2018. This application is rejected by the learned Trial Court vide the impugned order dated 21.12.2018; hence this petition.

4. The impugned order notes the notice of the petition under Section 125 Cr P C was issued to the petitioner for 04.03.2017 and was received by his tenant on 03.03.2017. Since, the petitioner did not appear on 04.03.2017, the matter was adjourned for 01.07.2017. The petitioner appeared with his learned counsel on that day and took time to file the reply. The matter was again adjourned for 18.11.2017, on which date also the learned counsel for petitioner appeared but as the learned Presiding Officer was on leave the matter was adjourned to 16.12.2017. The petitioner did not file any written statement even 18.11.2017. On 16.12.2017, the case was transferred to another Court and proxy counsel for the petitioner again appeared, but did not file the written statement hence seven days were given to file the written statement with a caution that in case the same is not filed, the right of

the petitioner to file the written statement shall be closed. The matter was then adjourned to 31.03.2018 for arguments on interim maintenance application. Yet again no one appeared on behalf of the petitioner and on 28.04.2018 Ms.Priyanka, proxy counsel appeared on behalf of petitioner and requested the discharge of the counsel as no instructions were received by her. The counsel was thus discharged while adjourning the matter to 03.05.2018, on which date as none appeared on behalf of the petitioner, the petitioner was proceeded ex parte. The formal order was also passed for closing the right of the petitioner for filing the written statement.

5. On 07.06.2018, the respondent examined herself in *ex parte* evidence and matter was adjourned for *ex parte* final arguments. However, on said date, the petitioner along with present counsel appeared and sought time to file an application for setting aside the *ex parte* order and for permission to file the written statement. There was strike of lawyers on 08.06.2018 and the application could not be filed. Thereafter, on 01.07.2018, he filed an application for obtaining the certified copy of order sheets, and these were received only on 15.08.2018. Yet again the application under Order IX Rule 7 CPC was not filed within 30 days of the receipt of the certified copies of the order, but was filed only on 26.09.2018.

6. The learned counsel for the petitioner urges the fault of the earlier counsel and says a litigant should not suffer. The petitioner refer to the law relating to this proposition. No doubt about the law in this regard, but it would be applicable only if a *party has done*

everything in its power and expected of him and that only if the party is innocent.

7. Admittedly, the petitioner has been appearing before the learned Trial Court from 01.07.2017 but did not prefer to file any reply/written statement to the pending petition under Section 125 Cr P C or reply to the application under Section 24 HMA. Even on 07.06.2018 when the new counsel was engaged, he appeared in the Court and took time to file an application under Order IX Rule 7 CPC. However, such an application was filed only on 26.09.2018. This callous attitude of the petitioner in taking more than 2½ months even after reopening of the Courts in filing an application under Order IX Rule 7 CPC also goes against the petitioner. I have perused the impugned order. It is a well written order passed after appreciating the facts of the case, hence do not call for any interference by this Court.

8. The petition has no merits and is accordingly dismissed. The pending application also stands disposed of. No order as to costs.

YOGESH KHANNA, J.

FEBRUARY 01, 2019

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