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

Date of Decision : 15.12.2020

+ **C.R.P. 82/2020 & CM APPL. 32915/2020, 32916/2020 & 32917/2020**

PANKAJ KHANNA Petitioner
Through: Mr.Prateek Chaturvedi, Adv.
with petitioner.

versus

SHALINI GUPTA Respondent
Through: Mr.Shivam Goel, Mr.Ramya
Kutty & Ms.Shalini Gupta,
Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition has been heard through video conferencing.
2. This petition has been filed by the petitioner challenging the order dated 20.02.2020 passed by the learned Principal Judge (South East), Family Courts, Saket in HMA No.1040/2017 dismissing the application of the petitioner seeking de-exhibition of the document-Ex.PW1/10 filed by the respondent alongwith her replication. The petition further challenges the order dated 06.11.2020 passed by the learned Principal Judge dismissing the application of the petitioner seeking review of the order dated 20.02.2020.
3. It is the case of the petitioner that a document not having been produced alongwith the plaint/petition, can be produced at a later stage

Signature Not Verified

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by the plaintiff only with the leave of the Court, in absence of which, it is inadmissible in evidence. Reliance in this regard has been placed by the petitioner on Order VII Rule 14 sub Rule 3 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”).

4. The learned counsel for the petitioner submits that in the present case Ex.PW1/10, which is an email dated 25.03.2013 purportedly addressed by the petitioner to the respondent was not produced by the respondent alongwith her petition, however, was filed as a document alongwith her replication. He submits that the said document did not have any specific reference in the replication and therefore, escaped attention of the petitioner. The same was thereafter wrongly and inadvertently exhibited while recording the examination of the respondent as PW1. This mistake was realized by the petitioner only when the petitioner was confronted during his cross-examination with the said document and immediately thereafter the application was filed seeking de-exhibition of the said document.

5. The learned counsel for the petitioner placing reliance on the judgment of the Supreme Court in ***R.V.E. Venkatachala Gounder vs. Arulmigu Viswesaraswami & V.P. Temple*** (2003) 8 SCC 752, submits that the question of admissibility of a document in evidence can be raised by a party even at the stage of Appeal and therefore, mere delay in raising such objection cannot be a ground to dismiss the application filed by the petitioner. Further, placing reliance on the judgment dated 29.04.2016 of this Court in CS(OS) 3457/2015 titled ***Mr.Arun Jaitley v. Mr.Arvind Kejriwal & Ors.***, the learned counsel



for the petitioner submits that even if this document is to be exhibited and allowed to be admitted in evidence, the petitioner should have been granted an opportunity to place his response to the said document by way of an additional written statement.

6. On the other hand, the learned counsel for the respondent, who appears on advance notice, challenges the very maintainability of the present petition. Placing reliance on the Section 19(5) of the Family Courts Act, 1984, the learned counsel for the respondent submits that the maintainability of a revision petition against an order passed by the learned Family Courts is specifically barred.

7. He further submits that even otherwise, a petition under Section 115 of the CPC would not lie against the orders impugned in the present petition as they are interlocutory in nature. In this regard he places reliance on the judgment of the Supreme Court in ***Shiv Shakti Coop. Housing Society v. Swaraj Developers***, (2003) 6 SCC 659.

8. On the merit of the petition, the learned counsel for the respondent submits that the matrimonial petition filed by the respondent before the learned Family Court had made reference to the email dated 25.03.2013, which is now exhibited as Ex..PW1/10. The same was inadvertently not filed with the petition, however, was placed on record alongwith the replication, which was filed on 26.11.2018. The evidence of the respondent was recorded on 21.09.2019 when the said email was exhibited as Ex..PW1/10. The cross-examination of the respondent continued for three days thereafter without any objection to the exhibition of the document



being raised by the petitioner. The petitioner himself was cross-examined by the respondent on 21.11.2019 and specific questions were put on the email/document and answered by the petitioner. It is only on the adjourned date of cross-examination that the petitioner raised an objection on the validity of the said document and it is only thereafter that the petitioner filed an application challenging admissibility of the said e-mail/document.

9. He submits that the respondent could have even have confronted the petitioner with the said email during his cross-examination without having earlier filed the same. In support of this proposition, he places reliance on the Order VII Rule 14 Sub Rule 4 of the CPC as also the judgment of this Court in *Subhash Chander v. Bhagwan Yadav*, MANU/DE/3343/2009.

10. As far as the maintainability of the present petition is concerned, the learned counsel for the petitioner submits that the same is maintainable in view of the Section 21 of the Hindu Marriage Act, 1955 read with Section 13 of the Family Courts Act, 1984.

11. I have considered the submissions made by the learned counsels for the parties.

12. Section 19 of the Family Courts Act, 1984 reads as under:-

Section 19. Appeal

1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law, an



appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.

(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties² [or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991 (59 of 1991).]

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order of a Family Court.

(4) The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and as to the regularity of such proceeding.

(5) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court.

13. In view of the Section 19(5) of the Family Courts Act, 1984 having specifically barred the maintainability of the Revision Petitions against the orders passed by the learned Family Court, the present petition would clearly not be maintainable. Section 21 of the Hindu Marriage Act, 1955 read with Section 13 of the Family Courts Act, 1984 can of no assistance to the petitioner in this regard.



14. However, having held the above, I shall still deal with the petition on merit considering the same as one filed under Article 227 of the Constitution of India.

15. On the merit of the petition, it is not denied that the e-mail was mentioned by the respondent in her matrimonial petition. It is true that the e-mail was produced by the respondent alongwith her replication without seeking leave of the Court, however, it is also to be noted that said document was filed by the respondent way back on 26.11.2018. The same was thereafter exhibited during the examination of the respondent on 21.09.2019, without any objection being raised by the petitioner. The petitioner was also cross-examined on this document on 21.11.2019. There is no complete bar on the production of a document alongwith the replication at a later stage. The requirement is one of seeking leave of the Court. The procedures are handmade of justice and cannot be used to deny the same. In the present case, the petitioner had full opportunity to raise objection on the filing/admissibility of the document. He chose to challenge the same only after him having been cross-examined by the respondent. Therefore, the judgment of the Supreme Court in ***R.V.E. Venkatachala Gounder*** (supra) would not render any support to the submission of the petitioner.

16. In ***Arun Jaitley*** (supra), the Court was dealing with an application Under Order VI Rule 16 of the CPC filed by the defendant therein seeking striking of the additional pleadings of the plaintiff therein. The Court held that though the practice of adding pleadings



through replication should be deprecated, at the same time allowed the same by allowing an opportunity to the defendant therein to file additional written statement. In the present case, such opportunity at that stage was never sought by the petitioner. In fact, I am informed that the final arguments in the matrimonial petition have already been addressed by the learned counsel for the respondent herein.

17. In view of the above, I find no merit in the present petition. The same is dismissed. There shall be no order as to cost.

NAVIN CHAWLA, J

DECEMBER 15, 2020/rv