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

Date of decision: 19.07.2023

+ **CM(M) 481/2019 & CM APPL. 13481/2019**

+ **CM(M) 483/2019 & CM APPL. 13529/2019**

POOJA BHALLA

..... Petitioner

Through: Ms.Kiran, proxy counsel for
Ms. Koshima Arora, Adv.
(through V.C.) along with the
petitioner in person through
V.C.

versus

AMIT BHALLA

..... Respondent

Through: Mr.Prateek Goswami,
Mr.Shashank Goswami &
Mr.Sahil Giri, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. These petitions have been filed challenging the orders dated 19.01.2018, 22.10.2018, and 02.02.2019 passed by the learned Judge, Family Courts, South-East District, Saket Courts, Delhi (hereinafter referred to as the 'Family Court') in GP No. 38/2017 and HMA No. 459/2017 titled ***Amit Bhalla v. Pooja Bhalla.***

2. By way of the Impugned Order dated 19.01.2018, in absence of the written statement filed by the petitioner herein

Signature Not Verified and as none was appearing for the petitioner, the learned Family

Digitally Signed By: SUNIL

Signing Date: 21.07.2023

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CM(M) 481/2019 & CM(M) 483/2019



Court was pleased to dismiss the application filed by the petitioner under Order IX Rule 7 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') and direct striking off of the defence of the petitioner.

3. By the Impugned Order dated 22.10.2018, due to repeated adjournments sought by the petitioner for the said purpose, the right of the petitioner to cross-examine the respondent was closed.

4. By the Impugned Order dated 02.02.2019, the petitioner was granted one further opportunity to cross-examine the respondent, subject to payment of costs of Rs.10,000/-.

5. The learned counsel for the petitioner submits that the petitioner, on separation from the respondent, had shifted to Lucknow and was finding it difficult to prosecute her case in Delhi. For the said reason, there were defaults in her appearance and she should be granted an opportunity to defend the above-mentioned petitions. She further submits that, in fact, on 19.01.2018, after the Impugned Order had been passed, the counsel for the petitioner had appeared before the learned Family Court, however, the learned Family Court did not record her appearance and stated that the order already stands passed. She submits that a sympathetic view be taken in favour of the petitioner in the present case.

6. On the other hand, the learned counsel for the respondent vehemently opposes any relief being granted to the petitioner. He submits that a perusal of the orders passed in the petitions before the learned Family Court would show that the petitioner



has been taking the Court proceedings for granted and has intentionally delayed the adjudication of the above petitions by more than eight years now.

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

8. The Guardian Petition and the Divorce Petition were filed by the respondent in the year 2015. As recorded in the Impugned Orders, the petitioner appeared in these proceedings on 14.01.2016. However, as the petitioner did not appear further, she was proceeded *ex-parte* on 13.01.2017. The petitioner thereafter filed an application under Order IX Rule 7 of the CPC seeking recall of the order proceeding her *ex-parte*, however, did not file her written statement. The said application was also dismissed in default by the Impugned Order dated 19.01.2018, also striking off of her defence in the petitions. The petitioner took no steps even thereafter.

9. The submission of the learned counsel for the petitioner that on 19.01.2018, a counsel had appeared for the petitioner before the learned Family Court, cannot be accepted as no such application was filed before the learned Family Court immediately after 19.01.2018.

10. The petitions were thereafter fixed by the learned Family Court for recording of the evidence of the respondent. The respondent filed his affidavit of evidence, which was tendered on 06.07.2018. On 22.10.2018, a proxy counsel appeared for the petitioner before the learned Family Court and requested for an adjournment. The learned Family Court refused such



indulgence to the petitioner taking into account her past conduct, and closed petitioner's right to cross-examine the respondent. The respondent closed his evidence on that day.

11. It is only thereafter that the petitioner filed an application seeking opportunity to cross-examine the respondent, which was granted vide the Impugned Order dated 02.02.2019, however, subject to payment of Rs.10,000/- as costs. I am informed that the petitioner has cross-examined the respondent on one day, however, the cross-examination of the respondent remains inconclusive.

12. Keeping in view the above conduct of the petitioner where the petitioner in spite of opportunity being granted did not file her written statement; the application under Order IX Rule 7 of the CPC also had to be dismissed for default; and took no steps thereafter to challenge the said order or prosecute the petitions pending before the learned Family Court with some vigilance, I see absolutely no infirmity in the Impugned Orders dated 09.01.2018. While in family disputes, the Courts are generally sympathetic and indulgent, over indulgence can defeat the interest of justice.

13. The learned Family Court in spite of the above lapse on the part of the petitioner, granted one further opportunity to the petitioner to cross-examine the respondent subject to payment of costs of Rs.10,000/-. I fail to understand how the petitioner can challenge this order where indulgence has been granted to the petitioner. I am informed that the petitioner has paid the costs and the respondent has been cross-examined on one date.



14. In view thereof, the challenge to the Impugned Orders dated 22.10.2018 and 02.02.2019 has been rendered infructuous.

15. As the cross-examination of the respondent has not been concluded, the petitioner is granted opportunity to conclude the cross-examination of the respondent. The learned Family Court shall fix dates for the said purpose. In case the petitioner, in spite of this opportunity granted, fails to cross examine the respondent, the learned Family Court is directed not to grant any adjournment to the petitioner for the said purpose. In case the petitioner does not avail of the opportunity now being granted to her, her right to cross-examine the respondent shall stand closed.

16. The petitions and the pending applications are disposed of in the above terms.

NAVIN CHAWLA, J

JULY 19, 2023/rv/rp