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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 28th April, 2023

+ CM (M) 689/2023 CAV 221/2023 & CM APPLs. 21457-60/2023
NAVEEN KUMAR DALAL Petitioner

Through: Mr. Mukesh M. Goel, Adv. with
Petitioner in person. (M:9810910312)

versus

NEELAM KADYAN Respondent

Through: Mr Ashutosh Dubey, Ms. Rajshri
Dubey, Mr. Abhishek Chauhan, Mr.
Amit P Shahi & Mr. Amit Kumar,
Advs. with Respondent in person. (M:
9953587630)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.

CAV 221/2023

2. The caveat is discharged, as the caveator has appeared.

CM APPLs. 21458-60/2023

3. Allowed, subject to all just exceptions. Applications are disposed.

CM (M) 689/2023 & CM APPL. 21457/2023

4. The Petitioner and the Respondent are husband and wife who have been embroiled in an acrimonious matrimonial litigation.

5. In the present petition, the Petitioner - Naveen Kumar Dalal (*hereinafter, "husband"*) has challenged the impugned order dated 29th March, 2023 passed by the Id. Judge, Family Court, Patiala House Courts,

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New Delhi (*hereinafter*, “*Family Court*”) by which the right of the husband to cross examine the Respondent - Smt. Neelam Kadyan (*hereinafter*, “*wife*”) has been closed. The husband’s evidence has also been closed and the matter has been fixed for final arguments for tomorrow i.e. on 29th April, 2023.

6. The petition seeking divorce was filed by the Wife in 2013 and is yet to reach a conclusion despite almost a decade having been passed. It appears that, repeatedly at every stage petitions are being filed by the husband challenging various orders passed by the Id. Family Court. One such order was order dated 20th February, 2020 passed in **HMA No. 464/18** titled **Neelam Kadyan Vs. Naveen Dalal**, which was considered by this Court in **CM (M) 623/2020** titled **Naveen Kumar Dalal v. Neelam Kadyan**. In the said case vide order dated 15th December, 2020. In the said petition also the grievance was that the right to cross examination was closed. This Court allowed the husband to cross examine the wife in the following terms:

“7. Having given my thoughtful consideration to the rival submissions of the parties and perused the record, I find that the learned Family Court has hurriedly proceeded to close the right of the petitioner to cross-examine the respondent. The matter was listed for cross-examination of the respondent for the second time on 20.02.2020, and the petitioner had admittedly cross examined her on the earlier date of 18.12.2019. Learned counsel for the respondent is unable to deny that it was the very first occasion on which an adjournment was being sought for cross-examination of the respondent.

8. In my view, the learned Family Court, while passing the impugned order, ought to have taken into consideration that in these trying times, when

the entire world is reeling under the effect of COVID-19, no serious prejudice would have, even otherwise, been caused to the respondent if the matter had been adjourned for one date. On the other hand, the passing of the impugned order dated 20.02.2020 and the subsequent refusal of the learned Family Court to recall the order dated 20.02.2020 has caused further delay in the matter, which aspect also seems to have escaped the notice of the learned Family Court while passing dated 14.10.2020. In the light of the aforesaid, the impugned orders dated 20.02.2020 and 14.10.2020 are wholly unsustainable and are accordingly, set aside.

9. As the matter is stated to be listed before the learned Family Court on 22.11.2021, the petitioner will ensure that in case the respondent is present, her cross-examination is conducted on the said date and on any other subsequent date, as may be directed by the learned Family Court.

10. The Family Court will, however, not grant any unnecessary adjournment to the petitioner and keeping in view the orders already passed by this Court, endeavour to expeditiously dispose of the matter.”

7. The cross examination of the wife by the husband, before the Id. Family Court, has since then continued over several dates being 30th April, 2022, 18th July, 2022, 19th July, 2022 & 7th September, 2022. On 16th March, 2023, none had appeared for the husband and the right of the husband to cross examine the wife was closed by the Id. Family Court. In the said order the Id. Family Court had also expressed concern that the said case was one of the oldest cases pending before the Id. Family Court and thus, no unnecessary adjournments would be granted in the matter. The said order dated 16th March, 2023 reads as under:

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“It is already 2:30 p.m. No one has appeared on behalf of the respondent since morning despite repeated calls whereas petitioner has been present since morning for her cross-examination.

Perusal of the record shows that earlier also right of the respondent to conduct cross-examination of the petitioner was closed. Thereafter, respondent had approached the Hon'ble High Court where Hon'ble High Court vide its order dated 18.11.2021 had given opportunity to the respondent to conduct cross-examination of the petitioner on 22.11.2021 itself or on any other subsequent date. However, since then, for one reason or the other, the cross-examination of the petitioner could not be completed by the respondent and today no one had turned up on behalf of the respondent to conduct the cross-examination of the petitioner. Therefore, in these circumstances, right of the respondent to conduct cross-examination of the petitioner is hereby closed once again.

Vide separate statement of petitioner, PE is closed.

Put up for RE on 29.03.2023.

Evidence affidavit of the respondent's witness be supplied atleast 07 days prior to next date of hearing.

It is made clear that since this is one of the oldest matters in this court, no unnecessary adjournment shall be granted to either party.”

8. Thereafter, the husband filed an application seeking recall of the above order, which was decided by the Id. Family Court vide the impugned order dated 29th March, 2023. The relevant part of the impugned order is as under:

“Perusal of record shows that on 18.07.2022, 19.07.2022, 07.09.2022, 15.09.2022 and

28.09.2022, matter was listed to be taken up at 2PM. On 15.09.2022 and 28.09.2022, matter was simply adjourned. On 28.09.2022, this matter was listed for 13.12.2022 but there was no direction that it shall be taken up on 2 PM. On 13.12.2022, court was on leave and as such matter was adjourned was 16.03.2023 and no timing was fixed. Therefore, to say that this matter is used to be taken up at 2 PM is not fully correct particularly in the light of order dated 28.09.2022, 13.12.2022. In any case, even if it was to be taken up at 2 PM, respondent should have appeared at 2 PM to apprise the court but the application is completely silent as to why he was not present. Apart from this, this court is fully in agreement with the Ld. Counsel for petitioner that counsel for respondent had ample time to reach the court after dropping his wife at the airport on 16.03.2023. Further, affidavit of the associate counsel who was asked to appear in the matter and who allegedly appeared on that day after 2:40PM, has not been filed. Further, if said associate counsel had appeared, he would have been told about the proceedings of the day and, therefore, it is not believable that respondent or his counsel did not come to know about his right to cross-examine PW-1 has been forfeited, any time before he saw District Court App. Where matter was showing listed for RE.

In the aforesaid circumstance as noted above, no ground has been made out by the respondent in the present application as well as in the contention as put forth, to give another opportunity to the respondent to cross-examine PW-1, hence, present application is hereby dismissed.

*Put up for final arguments on 29.04.2023.
Copy of this order be given dasti to Ld. Counsel
for respondent.”*

9. A perusal of the above order, shows that the Id. Family Court has expressed complete exasperation in the manner in which the proceedings are being prolonged by the husband. It is in such circumstances that the application of the husband was dismissed by the impugned order.

10. Today, the Court has once again put to the husband that considering the long standing dispute between the parties, why he is not agreeable to give a divorce to his wife. It is submitted on behalf of the husband that the wife has made various allegations against him.

11. The Court has heard the submissions of the Id. counsels for the parties. The parties were married way back in 1998. According to the wife, she has been physically separated from her husband since 2007. However, the same is disputed by the Id. Counsel for the husband. The divorce proceedings itself have commenced almost a decade ago in 2013 and, do not appear to be reaching any conclusion due to the repeated petitions being filed by the husband challenging the orders of the Id. Family Court.

12. The scope of the present petition is restricted to the impugned order dated 29th March, 2023 passed by the Id. Family Court. The Court has perused the order sheet and has seen that the Id. Judge, Family Court has given sufficient opportunities to the husband to cross-examine his wife.

13. The Hon'ble Supreme Court, in the case of **Ajit Mohan vs. Legislative Assembly National Capital Territory of Delhi [WP(C)1088 of 2020]** stressed on the need to set time limits for interim as well as final proceedings. The relevant part of the postscript of the said judgment dated

8th July, 2021 is as under:

“3. What is the way forward? We do believe that there needs to be clarity in the thought process on what is to be addressed before the Court. Counsels must be clear on the contours of their submissions from the very inception of the arguments. This should be submitted as a brief synopsis by both sides and then strictly adhered to. Much as the legal fraternity would not want, restriction of time period for oral submissions is an aspect which must be brought into force. We really doubt whether any judicial forum anywhere in the world would allow such time periods to be taken for oral submissions and these be further supplemented by written synopsis thereafter. Instead of restricting oral arguments it has become a competing arena of who gets to argue for the longest time.

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10. Another matter of concern is prolonged interim proceedings. In criminal matters, even bail matters are being argued for hours together and at multiple levels. The position is no different in civil proceedings where considerable time is spent at interim stage when the objective should be only to safeguard the rights of the parties by a short order, and spend the time on the substantive proceedings instead which could bring an end to the lis rather than on the interim arrangement. In fact, interim orders in civil proceedings are of no precedential value. This is the reason it is said that we have become courts of interim proceedings where final proceedings conclude after ages- only for another round to start in civil proceedings of execution.”

14. It is observed that cross-examination of a witness is meant to be an

opportunity to the concerned party to rebut the evidence given by the witness. The same ought to be concluded within a reasonable time limit and cannot continue *ad nauseam* in a never ending manner. In the present case, repeated indulgences have been granted by this Court as also by the Id. Family Court to the husband to conclude the cross-examination. As per the order sheets of the Id. Family Court, the cross examination seems to be continuing on dates after dates. Such cross-examination in matrimonial matters would be nothing more than sheer harassment. Under such circumstances, the Court is not inclined to grant any further opportunity to the husband to cross-examine the wife.

15. Insofar as the evidence of the husband is concerned, no evidence has been led and it was only on 16th March, 2023 that the wife's evidence was closed and, the husband's evidence and affidavits for RE were directed to be filed within one week. Thereafter, vide the impugned order dated 29th March, 2023 the husband's evidence was also closed and the matter was fixed for final arguments.

16. In view of the same, the evidence on behalf of the husband shall be filed by 10th May 2023. The witnesses shall be produced before the Id. Family Court on two continuous dates i.e. on 17th May, 2023 and 18th May, 2023. On the said dates, the cross examination of the same shall be concluded and no further opportunity shall be granted to either of the parties. This opportunity is being given to the husband subject to payment of Rs.50,000/- as costs to be paid to the wife within 2 weeks.

17. Immediately after conclusion of the evidence by both the parties, the matter shall proceed for final arguments.

18. The present petition, along with all pending applications, is disposed of in the above terms.

**PRATHIBA M. SINGH
JUDGE**

APRIL 28, 2023/dk/kt

