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

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Date of decision: 03.07.2023

+ **MAT.APP.(F.C.) 186/2023 & CM APPL.32828-31/2023**

REEMA SALKAN

..... Appellant

Through: In person

Versus

SUMER SINGH SALKAN

..... Respondent

**Through: Mr. Anindya Malhotra & Mr. Rishabh
Goel, Advocates**

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present appeal has been preferred by the appellant seeking setting aside of orders dated 04.08.2022, 20.12.2022 and 11.01.2023 passed by learned Judge, Family Court, North, Rohini, Delhi, in HMA Case No.1490/2018 titled as “*Sumer Singh Salkan Vs. Reema Salkan*”, and to restore her right to cross-examine respondent/PW-1 without conditional cost of Rs.10,000/- in view of order dated 10.01.2022 passed by the Hon'ble Supreme Court in Miscellaneous Application No.21/2022 in Miscellaneous Application No.665/2021 in *suo moto* Writ Petition (C) No.3/2020 titled in Re: Cognizance for Extension of Limitation.
2. Notice issued.



3. Mr. Anindya Malhotra, learned counsel appearing on behalf of respondent accepts notice.
4. The appellant (respondent before the Trial Court) has averred that vide first impugned order dated 04.08.2022, learned Family Court restored her right to continue cross-examination of the respondent (petitioner/PW-1) subject to payment of cost of Rs.10,000/- by compensating the respondent therein on account of delay of 18 months in filing restoration application for cross-examination on 11.11.2021. The appellant's right to cross-examine respondent's (petitioner before the Trial Court) witnesses was closed as the appellant could not attend the Court on 25.02.2020.
5. The second impugned order dated 20.12.2022 passed by the learned Family Court has been challenged whereby appellant's application dated 09.09.2022 seeking recall of first impugned order dated 04.08.2022 to the limited extent of payment of cost was dismissed.
6. On 11.01.2023 when the matter came up for hearing before the learned Family Court, the appellant submitted that she was unable to comply with order for payment of cost and sought its waiver. The Family Court keeping aside the issue of payment of cost, provided yet another opportunity to the appellant to cross-examine the respondent. However, since appellant sought another adjournment on account of unavailability of her counsel, the learned Family Court once again closed right to continue cross-examination of respondent's witnesses.
7. During the course of hearing, appellant submitted that the respondent herein had filed the first divorce petition in Canada to circumvent the Hindu Marriage Act and obtained *ex parte* 'divorce judgment' under Canadian law



on 26.04.2004, which was declared *null and void* by the Family Court, Rohini, Delhi vide order dated 23.08.2018. Also, pursuant to directions passed by the Hon'ble Supreme Court vide order dated 25.09.2018 in an appeal preferred by the appellant herein, she was granted interim maintenance @Rs.25,000/- p.m. w.e.f. 14.10.2004, however, the said direction was not complied with by the respondent. The appellant submitted that contempt petition being CONT (C) No. 89 of 2019, petition under Section 125 Cr.P.C. and divorce petition are pending against the respondent. She submitted that on 23.10.2019 and 27.01.2020, the appellant could not attend the court due to typhoid and on the next date 06.02.2020, when appellant sought a pass-over, the Court directed the appellant herself to cross-examine the respondent's witness. The order dated 06.02.2020 notes that *she submits that she herself is a practicing advocate and would herself conduct her matter and has not engaged any advocate*".

8. Appellant has submitted that she could not attend the Court on the dates fixed due to her ill health and even her advocate's mother was suffering from cancer, who eventually passed away, and the learned Family Court in the light of order dated 19.07.2020 passed by the Hon'ble Supreme Court for expeditious disposal of the case, has rendered the impugned order, which is too harsh and deserves to be set aside.

9. On the other hand, learned counsel on behalf of respondent submits that the appellant's intention is to linger on the case to harass the respondent by misusing the judicial process; the order passed by the learned Family Court is just and proper and calls for no interference by this Court.

10. After hearing learned counsel for parties at length and on perusal of



material placed before this Court, we find that in the order dated 04.08.2022, the learned Family Court has observed that on 25.02.2020, when none appeared on behalf of respondent, after waiting till 12:30 p.m., PW-1/ respondent was discharged after recording his further examination as 'Nil'. The learned Family Court has also observed that appellant did not appear on several dates, though it has also been noted that during the said period Covid-19 guidelines were in operation. It is pertinent to mention here that the learned Family Court has also noted in the impugned order dated 04.08.2022 that certain medical documents were attached by the appellant and as per Report dated 13.02.2020, appellant had positive result for typhoid.

11. In the considered opinion of this Court, even though the learned Family Court has taken note of the fact that Covid 19 guidelines were prevalent and that the court hearings were restricted to urgent matters and also that appellant herein had produced the medical papers, still the Family Court closed the right of appellant to cross examine respondent's witnesses.

12. On further perusal of second impugned order dated 20.12.2022 this Court finds that the learned Family Court has only observed that no ground for recalling of order dated 04.08.2022 is made out.

13. The third impugned order dated 11.01.2023 passed by the learned Family Court records that on 06.02.2020 the appellant had contended before the court that she is a practising advocate and would herself conduct the matter and also she has been conducting her own case on earlier dates. Though the stand of appellant before this Court is that she is not a practicing lawyer and on 06.02.2020 she had sought a pass-over as her counsel was not



available.

14. At this juncture, it is pertinent to mention that even before this Court appellant has represented her case herself but this does not limit her right to at this stage engage an Advocate to cross-examine the respondent before the learned Family Court.

15. This Court is conscious that in the light of order dated 19.07.2020 passed by the Hon'ble Supreme Court, the learned Family Court has proceeded to expeditiously dispose of the divorce petition pending between the parties, however, we cannot lose sight of the fact that on 25.02.2020 the respondent/witness was discharged without cross-examination and on 25.03.2020 the Nation faced complete lockdown. Further, by virtue of directions of Supreme Court in *Suo motto* Writ Petition (C) No. 3 of 2020 the period from 15.03.2020 till 14.03.2021 was directed to be considered out of limitation. Moreover, during this period, the matter was listed before the Family Court only twice i.e. on 09.03.2021 and 02.11.2021 and was not considered and listed in the category of 'urgent matters' but was adjourned *en bloc*. The application seeking setting aside of order dated 25.02.2020 was disposed of by the Family Court vide first impugned order dated 04.08.2022, which is assailed before this Court.

16. Keeping in view the fact that the appellant has not cross-examined the respondent and filed one application after another and has now approached this Court by way of present appeal, we hereby direct the learned Family Court to permit the appellant to cross-examine the respondent for two hours, on two consecutive dates. It is made clear that no further time for cross-examination of respondent shall be granted to appellant on whatsoever



ground.

17. It is agreed by learned counsel for parties that two more witnesses, who are official witnesses and have already been examined in chief, be permitted to be cross-examined by the appellant on one date. The learned Family Court is accordingly directed to grant one date to permit the appellant to cross-examine those two official witnesses for maximum one hour. Further, the respondent, if he so desires, is at liberty to examine the other witnesses as per the list of witnesses.

18. Further the cost of Rs.10,000/- imposed by the learned Family Court upon the appellant permitting him to cross-examine respondent is hereby set aside. If the appellant fails to comply with order passed by this Court, the Trial Court shall recover the cost of Rs.10,000/- with an additional cost of Rs.10,000/- from the appellant.

19. With directions as aforesaid, the present appeal and pending applications are accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

JULY 03, 2023

r/rk