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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: November 03, 2023

+ MAT.APP.(F.C.) 205/2023, CM APPL. 54509/2023

UMESH KUMAR BAREJA

..... Appellant

Through: Mr. Karan Dua and Mr. Aman
Chawla, Advocates.

versus

SUNITA DUBEY

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

CM APPL. No. 54509/2023

1. For the reasons stated in the application, the same is allowed and appeal is restored to its original number and heard today.

2. Application is disposed of.

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3. As the respondent has not been appearing, we have heard learned counsel appearing for the appellant on the appeal.

4. This appeal has been filed with the following prayers:

“ (i) Set aside the order dated 12.05.2023, Passed by sh. Kuldeep Narayan, Judge family court, south-east district, Saket courts in case no. 203/2022; and



(ii) grant the liberty to the petitioner to submit his rejoinder to the reply filed by the respondent.”

5. In substance, the challenge in this appeal is to an order dated May 12, 2023, passed by learned Judge Family Court, South-East District, Saket Courts, whereby the learned Judge Family Court has dismissed the application filed by the appellant under Order VIII Rule 9 CPC seeking leave to file replication to the written statement filed by the respondent.

6. Our attention has been drawn to the application filed under Order VIII Rule 9 CPC giving the reasons for which the replication could not be filed on time. Relevant averments read as under:

“2. That after getting the notice from the court, respondent has filed written statement of more than 100 pages.

3. That the respondent in her written statement has mentioned hardcore false allegations against the petitioner which is need to be replied by the petitioner.

4. That the respondent has filed over 100 pages written statement to the 29 pages petition of the petitioner which contains 53 paras of Preliminary Objections, 60 paras of Preliminary Submissions and vast reply to the submissions of the petitioner. It is submitted that the whole written statement of the petitioner is bears false allegations on the petitioner, which is needed to be replied by the petitioner.

5. That the respondent has also filed 68 Annexures alongwith her written statement out of which many are forged by the respondent and every annexure of the respondent need to be replied by the petitioner to prove his allegations/ to prove the reply of the respondent as wrong.”

7. We have been informed that no reply to the application was filed. In fact, the application was dismissed on the first date of hearing. We have also been informed that written statement was filed on March 10, 2023 and the



next date of hearing was May 12, 2023, which is the date of passing of the impugned order.

8. The reason given by learned Judge Family Court while dismissing the application in the impugned order is the following:

“ No plausible ground has been mentioned in the application as to why the replication is required. The only ground mentioned is that the respondent has filed written statement running in over 100 pages to the 29 pages petition. The application is not meritorious and is accordingly dismissed.”

9. We are of the view, the averments made in the application, as noted above, have some justification to seek time to file replication. The learned Judge Family Court should have considered the reasons in proper perspective that is for giving fair opportunity to the party to put forward its case.

10. It is a fact that no limitation period is prescribed within which the replication is required to be filed. Nor learned Judge Family Court has referred to any such provision. Suffice to state, when the provisions of Family Courts Act, 1984 grants a discretion to the family court to lay down its own procedure with a view to arrive at a settlement in respect of a subject matter of the suit or proceedings or at the truth of the facts alleged by one party and denied by the other, learned Judge Family Court should have granted sufficient time to the appellant to file rejoinder, moreso, when the written statement as stated by the appellant is running into 100 pages (to a petition filed with 29 pages) with 68 annexures. Accordingly, the impugned order dated May 12, 2023 is set aside.



11. We grant four weeks time as a last opportunity to the appellant to file the replication to the written statement filed by the respondent in HMA No. 203/2022.

12. We have been informed that the next date of hearing before learned Judge Family Court – 02 is November 06, 2023. If that be so, learned Judge Family Court – 02 shall adjourn the proceedings to a date beyond four weeks as granted by us for filing the replication.

13. Appeal and pending application are disposed of.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

NOVEMBER 03, 2023/R