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

Date of Decision: 29.08.2023

+ **CM(M) 1408/2023**

SMRITI MADAN KANSAGRA Petitioner

Through: Mr.P.Banerjee, Ms.Mansi Sharma,
Ms.Astha, Ms.Anshika Sharma,
Ms.Akriti Anand, Advs.

versus

PERRY KANSAGRA Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL. 44619/2023 (exemption)

1. Allowed, subject to all just exceptions.

CM APPL. 44620/2023

2. This application has been filed by the petitioner praying for filing the list of dates and synopsis running into 11 pages.

3. For the reasons stated in the application, the same is allowed.

CM(M) 1408/2023

4. This petition has been filed by the petitioner challenging the Order Dated 07.07.2023 passed by the learned Principal Judge, Family Court, Patiala House Courts, New Delhi (hereinafter referred to as the 'Family Court') in Divorce Proceedings, being HMA No.302 of 2019 *Smriti Madan Kansagra v. Perry Kansagra, inter alia* praying



for the following reliefs:

- “a) Accept the present petition and set aside the order dated 07.07.2023 and direction to serve the Respondent through Ministry of Law and Justice passed in HMA No. 302 of 2019 titled “Smriti Madan Kansagra Vs. Perry Kansagra” passed by the Learned Principal Judge, Patiala House Family Court, New Delhi;*
- b) Pass an order directing the Learned Principal Judge, Patiala House Family Court, New Delhi to proceed ex parte in HMA No. 302 of 2019 titled “Smriti Madan Kansagra Vs. Perry Kansagra”.*
- c) Pass an order directing the Learned Principal Judge, Patiala House Family Court, New Delhi to decide and dispose off HMA No. 302 of 2019 titled “Smriti Madan Kansagra Vs. Perry Kansagra ex parte within 3 months.”*

5. The petitioner states that the respondent had entered appearance before the learned Family Court in the petition filed by the petitioner, being HMA No.302 of 2019 titled ***Smriti Madan Kansagra v. Perry Kansagra***. Thereafter, the respondent, on his own, instructed the learned counsel appearing for him to withdraw from the case. Though, there was no appearance on behalf of the respondent, the learned Family Court, vide its order dated 21.07.2022, in the interest of justice, felt it appropriate to direct the issuance of fresh notice on the respondent. The notice was directed to be served on the respondent through all modes including through E-mail. On 09.09.2022, the petitioner reported to the learned Family Court that the respondent had been duly served through E-mail. Instead of proceeding the respondent *ex parte* for his non appearance, the learned Family Court directed a fresh Court notice



to be issued to the respondent through the Ministry of Law and Justice.

6. On 07.07.2023, the learned Family Court has again adjourned the petition filed by the petitioner herein before it, to 09.09.2023, awaiting the report of the Ministry of Law and Justice on the service of the notice issued by the Court on the respondent.
7. The learned counsel for the petitioner submits that the respondent is intentionally evading service. He has, in fact, been served by way of an E-mail, which was a mode accepted by the Supreme Court as well, as recorded in the order dated 16.11.2021 passed by the Supreme Court in SMC (Civil) no.3/2021 in ***Re.: Perry Kansagra***. He submits that even this Court, vide order dated 12.09.2022 passed in MAT APP. (FC) no.115/2020 titled ***Master Aditya Vikram Kansagra & Anr. v. Mr.Perry Kansagara***, had deemed the respondent to be duly served with the notice issued by this Court and served upon him through E-mail.
8. I have considered the submissions made by the learned counsel for the petitioner.
9. It appears from the submission made by the learned counsel for the petitioner that the respondent had duly entered appearance in the petition filed by the petitioner herein and pending adjudication before the learned Family Court. After participating in the said proceedings, the respondent, of his own volition, chose to withdraw the Vakalatnama for the learned counsel he had appointed. It was for the respondent to then make alternative arrangements for his representation before the learned Family Court in the said



proceedings. The respondent cannot shift this burden on the Court or the petitioner to again find him and, in a manner of speaking, request him to enter appearance in such proceedings. In case the respondent chooses not to appear in the proceedings, the consequences thereof in law must follow.

10. Be that as it may, the learned Family Court felt it appropriate to direct the service of fresh notice on the respondent '*through all modes*'. One of the modes accepted by the Court is by way of E-mail. The petitioner contends that the respondent was duly served with the notice issued by this Court through E-mail. The said mode has been accepted by the Supreme Court, as also by the Division Bench of this Court, in litigations between the same parties, in the orders referred hereinabove. I, therefore, find no reason for the learned Family Court not to accept the said mode for a deemed service of the notice of the petition pending before it, on the respondent.
11. I, therefore, find that the learned Family Court has erred in not accepting the service of notice on the respondent.
12. As the petition before the learned Family Court is now listed on 09.09.2023 (which due to a holiday declared, will now be listed on 11.09.2023), the learned Family Court is requested to consider the above aspects and to deem the respondent to be duly served with the notice, and proceed further in accordance with law.
13. The learned Family Court is further requested to expedite the adjudication of the petition filed by the petitioner and pending before it.



14. The appeal is disposed of in the above terms.

NAVIN CHAWLA, J

AUGUST 29, 2023
RN/ss

