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

Date of decision: 15.09.2023

+ CM(M) 1495/2023

ANKIT KUMAR

..... Petitioner

Through: Mr.S.Rao, Mr.Sumit Goyal,
Adv.

versus

TINA GARG

..... Respondent

Through: Mr.R.K.Rai, Adv. along with
respondent in person

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL. 47623/2023(exemption)

1. Allowed, subject to all just exceptions.

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2. This petition has been filed by the petitioner challenging the order dated 13.07.2023 passed by the learned Judge, Family Court-01, East District, Karkardooma Courts, Delhi in HMA no.105/2021, titled ***Tina Garg v. Ankit Kumar***, dismissing the application filed by the petitioner herein under Order XIV Rule 5 (*wrongly mentioned in the Impugned Order as Order XVI Rule 5*) of the Code of Civil Procedure, 1908 (in short, 'CPC') filed by the petitioner herein.



of an additional issue challenging the territorial jurisdiction of the learned Family Court to adjudicate on the divorce petition filed by the respondent herein.

4. The learned Family Court has dismissed the said application, observing that the said issue has already been decided by the learned Family Court vide its order dated 28.03.2023 passed on the application filed by the petitioner herein under Order VII Rule 10 of the CPC, dismissing the same.
5. The learned counsel for the petitioner submits that the order dated 28.03.2023 was passed by the learned Family Court on an application filed by the petitioner under Order VII Rule 10 of the CPC and, therefore, was a demur on the contents of the petition filed by the respondent; the petitioner can always raise the said challenge again at the time of the final arguments of the divorce petition.
6. He further submits that while the respondent is relying upon her Aadhaar card and her statement that she had shifted to her uncle's residence, to claim that the learned Family Court has the territorial jurisdiction to entertain the divorce petition, the petitioner is relying upon a photocopy of the police verification report which indicates that the petitioner was not residing at the given address. He submits that, therefore, the issue of the territorial jurisdiction of the Family Court shall have to be determined by the learned Family Court at the time of the final adjudication of the Divorce Petition, considering the evidence led by the parties.



Apparel Ltd. v. M/s Panchanan International Pvt. Ltd. NC No.2020:DHC:1634, the learned counsel for the petitioner submits that a finding in an order dismissing an application under Order VII Rule 10 of the CPC would have no effect on an application filed under Order XIV Rule 5 of the CPC seeking framing of an additional issue.

8. On the other hand, the learned counsel for the respondent, who appears on advance notice, submits that the application filed by the petitioner before the learned Family Court, and even this petition, are a gross abuse of the process of law. He submits that the evidence of the parties has already been recorded and the divorce petition is listed for final hearing before the learned Family Court. He submits that in the written statement filed by the petitioner, the petitioner had, in fact, admitted to the territorial jurisdiction of the learned Family Court to adjudicate on the divorce petition.
9. I have considered the submissions made by the learned counsels for the parties.
10. The impugned order itself records that the petitioner had earlier filed an application under Order VII Rule 11 of the CPC, which was dismissed by the learned Family Court vide its order dated 01.03.2023. The petitioner also filed an application under Order VII Rule 10 of the CPC challenging the territorial jurisdiction of the learned Family Court to adjudicate on the divorce petition filed by the respondent. The same came to be dismissed by the learned Family Court vide its order dated 28.03.2023, observing



*"It is contention of Ld. Counsel for the respondent that petitioner is not residing at the address mentioned in her Aadhar card. Admittedly, the petitioner has filed copy of Aadhar card which is proved on record as Ex. PW-1/1 on which her address is mentioned as **"Teena Garg, C/o Krishan Lal, B-1106, 1st Floor, G.D. Colony, Mayur Vihar Phase-3, Vasundhara Enclave, East Delhi, Delhi-110096"**. Perusal of Aadhar card shows that petitioner is resident of Mayur Vihar which falls within the jurisdiction of this court. The petitioner in para no. 12 of the petition has stated that "Due to the fear of the respondent she left the locality and started to reside at the house of her maternal uncle (Fufa) in Mayur Vihar Phase-3, Delhi-96 locality and filed the complaint before CAW Cell East Delhi vide complaint dated 18.07.2020. PW-1 in the cross examination categorically stated that it is correct that on 11.06.2020 she had left her father's house and shifted to her uncle's house at Vasundhara Enclave because she was terrified". The contention of Ld. Counsel for respondent that petitioner is not residing at this address is devoid of any merits. No weightage can be given to the photocopy of police report filed by the respondent that petitioner is not residing at this address when the petitioner has filed copy of Aadhar card which show that she is residing at Mayur Vihar".*"

11. Still not satisfied, the petitioner then filed an application under Order XIV Rule 5 of the CPC, which has now been dismissed by the learned Family Court by the impugned order.

12. Clearly, the petitioner is trying all legal tactics to somehow delay

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the adjudication of the divorce petition filed by the respondent herein. The repeated filing of applications by the petitioner is clearly a tactic to abuse the process of the law.

13. It is also relevant to note that the respondent had already concluded her evidence before the application under Order XIV Rule 5 of the CPC was filed by the petitioner herein. By now, the evidence of both the parties stand concluded. The petitioner has also examined two witnesses in support of his case. The order dated 28.03.2023 passed by the learned Family Court, dismissing the application under Order VII Rule 10 of the CPC filed by the petitioner herein, clearly shows the finality of the finding of the learned Family Court on the issue of territorial jurisdiction of the Court.
14. I would also like to reproduce herein the relevant contention in the written statement filed by the petitioner before the learned Family Court. The same is as under:

“19. That para 19 is not disputed as far as Jurisdiction of this Hon'ble Court is concerned. However, petitioner has not filed any document to show her residence being at Mayur Vihar. Contents of preceding paras are reiterated and not repeated for brevity.”

15. Clearly, the petitioner had admitted to the territorial jurisdiction of the learned Family Court.
16. The reliance of the petitioner on the judgment of this Court in ***M/s Meyer Apparel Ltd.*** (supra), is also ill-founded inasmuch as, not only the petitioner admitted to the territorial jurisdiction of



the learned Family Court, but also the finding of the learned Family Court is not on basis of demurrer but was rendered after the respondent had already tendered her evidence and had been cross examined. The finding was, therefore, final in nature.

17. The petition and the pending application are accordingly dismissed with costs quantified at Rs.35,000/-, out of which Rs.15,000/- shall be paid to the respondent, while the remaining Rs.20,000/- shall be deposited by the petitioner with the 'Rojavanam Oldage Home', bank details of which are mentioned as:

Bank: ICICI Bank,
Bank A/c No: 609501101050,
IFSC Code: ICIC0006095.

18. The costs shall be paid/deposited by the petitioner within a period of two weeks from today.
19. *Dasti.*

NAVIN CHAWLA, J

SEPTEMBER 15, 2023

RN/am