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

Date of decision: 01.12.2023

+ **CM(M) 1735/2023 & CM APPL. 55029/2023**

NEHA GARG

..... Petitioner

Through: Mr.Kartikay Sharma and
Mr.Jagdeep Sharma, Adv.

versus

SHRI UMESH AGGARWAL

..... Respondent

Through: Mr.Sameer Nandwani,
Mr.Manish Gupta, Mr.Nikhil,
Mr.Akshat Gupta, Mr.Lovedeep
Raghav and Mr.Rohin Singh
Pande, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed challenging the Orders dated 10.04.2023, 12.07.2023 and 16.09.2023 (hereinafter referred to as 'Impugned Order(s)') passed by the learned Judge, Family Court, North-District, Rohini Courts, New Delhi (hereinafter referred to as 'Family Court') in HMA No. 463/2021, titled as *Umesh Aggarwal v. Neha Garg*.
2. By the Impugned Order dated 10.04.2023, the learned Family



Court was pleased to close the right of the petitioner herein, who is the respondent in the Divorce Petition, to cross-examine the three witnesses produced by the respondent herein, for the failure of the petitioner to appear before the Court despite repeated calls.

3. By the Impugned Order dated 12.07.2023, the learned Family Court recorded the statements of another three witnesses produced by the respondent herein, and on failure of the main counsel for the petitioner to appear before the Court, closed her right to cross-examine the said witnesses.

4. The respondent did not appear before the learned Family Court on 16.09.2023 as well, and the learned Family Court, by the Impugned Order dated 16.09.2023, closed the right of the petitioner to cross-examine another two witnesses produced by the respondent.

5. The learned counsel for the petitioner submits that, by the Order dated 28.09.2022, the learned Family Court had listed the Divorce Petition on 24.01.2023 for recording the examination-in-chief of the witnesses produced by the respondent herein. On 24.01.2023, the examination-in-chief of the three witnesses produced by the respondent was duly recorded and at the request of the learned counsel for the petitioner herein, the Divorce Petition was adjourned to 10.04.2023 for recording the cross-examination of these witnesses. He submits that on 10.04.2023, however, the learned counsel for the petitioner could not appear and the right to cross-examine the three witnesses was closed by the learned Family Court. He submits that in this manner only one opportunity was granted to the petitioner to cross-examine the three witnesses produced by the respondent.



6. He further submits that on 12.07.2023, due to intensive rains in Delhi, a general direction had been issued by the Delhi High Court requesting the courts to adjourn the matters listed before them in case of the non-appearance of the counsels. He submits that, in spite of the same, the learned Family Court recorded the examination-in-chief of three further witnesses produced by the respondent, and due to the non-appearance of the main counsel for the petitioner, closed the right of the petitioner to cross-examine these witnesses.

7. He submits that on 14.09.2023, he had filed an application seeking adjournment of the Divorce Petition which was listed on 16.09.2023 as the father of the counsel was unwell. The learned Family Court, however, refused to grant an adjournment and recorded the examination-in-chief of two further witnesses produced by the respondent herein and closed the right of the petitioner to cross-examine the said witnesses.

8. The learned counsel for the petitioner submits that, therefore, there were justified grounds for the petitioner not to appear on 12.07.2023 and 16.09.2023, and the learned Family Court has erred in closing the right of the petitioner to cross-examine the said witnesses. He further submits that a valuable right of the petitioner has been taken away by the Impugned Orders, which would cause grave prejudice to the petitioner to defend the Divorce Petition filed by the respondent.

9. On the other hand, the learned counsel for the respondent submits that, in spite of long passage of time, the petitioner took no steps to seek recall of the Orders dated 10.04.2023 and 12.07.2023. He



submits that from the same, it is apparent that the respondent is merely trying to delay the adjudication of the Divorce Petition filed by the respondent herein. He submits that the respondent is well versed in law and has done her professional degree in LLB. She knows that the court would generally be lenient to the respondent/wife in such matters and is trying to misuse the same to delay the adjudication of the Divorce Petition. He submits that, on 16.09.2023, one of the witnesses, that is PW-8, had come from Chandigarh to depose in the Divorce Petition. He submits that in case any indulgence is granted to the petitioner herein, in that event, the respondent would be gravely prejudiced.

10. I have considered the submissions made by the learned counsels for the parties.

11. While there may be reasons for the petitioner not to appear on the dates when the Divorce Petition was listed for recording the evidence of the witnesses of the respondent, the petitioner took no steps to seek recall of the Orders dated 10.04.2023 and 12.07.2023 till the passing of the Order of 16.09.2023, whereby the cross-examination of the final witnesses of the respondent was closed and the Divorce Petition was listed for the evidence of the petitioner. This itself shows that the petitioner, who is stated to be well versed in law, was not diligent in her defence in the Divorce Petition. I, *prima facie*, find some merit in the contention of the respondent that the petitioner was merely trying to play with the system knowing fully well that the court generally is lenient in cases of default in matrimonial disputes.



12. As far as non-appearance of the petitioner on 16.09.2023, however is concerned, the petitioner had informed the court and the counsel for the respondent, requesting for an adjournment on the ground of the ill-health of the father of the counsel for the petitioner. The respondent should, therefore, not have called the witnesses if they were to travel from out of station. For 16.09.2023, therefore, there was justified cause for the petitioner not to appear.

13. In view of the above, I find that there is no justification for the non-appearance of the petitioner before the learned Family Court on 10.04.2023, while some justification for the non-appearance of the petitioner on 12.07.2023 and 16.09.2023. I also find that the petitioner took no steps to seek immediate recall of the above orders and instead let the Divorce Petition proceed. At the same time, I am also cognizant of the fact that cross-examination of a witness is a valuable right of the petitioner and denial thereof would cause serious damage to petitioner in her defence.

14. As the delay caused by the petitioner is not substantial, in order to balance the equities, the respondent must be compensated for the inconvenience and the delay caused, while granting one final indulgence to the petitioner.

15. To show the *bona fide* of the petitioner, the learned counsel for the petitioner fairly agrees that the learned counsel for the respondent may move an application before the learned Family Court seeking appointment of a Local Commissioner for recording the evidence of the eight witnesses of the respondent, and the petitioner is willing to



not only accede to this request, if made by the respondent, but also bear half of the costs, including the fee of the learned Local Commissioner as directed by the learned Family Court.

16. As noted hereinabove, in total, there are eight witnesses who have been produced by the respondent and were examined in chief. The respondent must, therefore, be adequately compensated in case any indulgence is to be granted to the petitioner to recall these witnesses and an opportunity given to the petitioner to cross-examine them.

17. Accordingly, subject to payment of costs of Rs.1,00,000/- by the petitioner to the respondent, through counsel, on or before the next date of hearing of the Divorce Petition before the learned Family Court, and binding the petitioner to the statement recorded herein above, the Orders dated 10.04.2023, 12.07.2023 and 16.09.2023 shall stand recalled and the petitioner shall have an opportunity to cross-examine the eight witnesses produced by the respondent in the Divorce Petition.

18. The parties shall appear before the learned Family Court for seeking appointment of the learned Local Commissioner for recording of the evidence of the witnesses of the respondent herein, on 13th December, 2023.

19. Needless to state, the learned Family Court and the learned Local Commissioner, if appointed, shall not grant any unwarranted adjournments to either parties and shall make an endeavour for an



expeditious disposal of the Divorce Petition filed by the respondent herein.

20. The petition is disposed of in the above terms. The pending application also stands disposed of.

NAVIN CHAWLA, J

DECEMBER 1, 2023/ns

Click here to check corrigendum, if any