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

+ **CRL.M.C. 2542/2023 & CRL. M.A.9646/2023**

BHOOPENDER AND OTHERS

.....Petitioners

Through: Mr. Rakesh Nautiyal, Mr. Vinit
Chaudhary and Mr. Sehdev Rana,
Advocates.

versus

SMT RITIKA

.....Respondent

Through: Mr. Sachin Aggarwal, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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15.07.2024

1. The present petition has been filed seeking setting aside of the impugned order dated 24.01.2023 passed by ASJ-05, Distt. West, Tis Hazari Courts, Delhi in Criminal Appeal No. 72/2020 titled as “Ritika v. Bhoopender and Ors.” vide which the Ld. Sessions Judge condoned the delay in filing of process fee and issued summons to the respondent.

2. Briefly stated, the facts of the present case are that the respondent and petitioner no.1 were married, however on account of matrimonial discord, the respondent left the matrimonial home. Subsequently, a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 was filed and notice was directed to be issued to petitioner no. 1 for 17.09.2013. It was the case of the Respondent that process fee had been filed for summoning of petitioner Nos. 2 and 3, however, notice was not issued by the court staff. Subsequently, on various dates, the respondent failed to



file the process fee and the trial proceeded further. On 19.12.2019, the respondent stated that Petitioner No. 2 and 3 could not be served and sought summons to be issued to them, a request which was rejected by the learned Trial Court vide an order of the same date which held that since the process fee had not been filed, the respondent had waived off her right to summon Petitioner No. 2 and 3. The Respondent contending no deliberate inaction on her part and stating that the evidence in the case is yet to be completed, challenged the said order and the appeal was allowed vide impugned order, hence the present petition.

3. Learned Counsel for the petitioners submits that the impugned judgement is improper and has been passed without due consideration of the facts and the law. It is submitted that the Sessions Court has failed to consider the negligent delay of the Respondent in pursuing her case against the Petitioners by not filing the process fee, despite being present in the Trial Court on most dates since 15.01.2014. The Counsel also states that the Sessions Court has failed to consider the fact that almost 10 years have passed since the filing of the complaint and the Petitioner No. 2 and 3 would face great difficulty in collecting the documents for their defence thus causing grave prejudice.

4. Learned Counsel for the respondents has opposed the above petition and submits that the impugned order has been passed after giving due consideration to the facts of the case and after carefully observing the records available to the Court.

5. I have heard the learned counsels for the parties and have perused the relevant documents.



6. The Learned Sessions Judge had observed that on 20.11.2013, due to the mistake of the court staff, despite the fact that the process fees had been filed by the respondent, notice was not issued to the concerned Petitioners. After observing subsequent orders, while acknowledging certain delay on the part of the Respondent, the Sessions court observed that the order-sheets of the Trial Court remained silent with respect to the issue of summons to Petitioner No. 2 and 3 and that the said aspect was never dealt with by the concerned court.

7. After perusing the records available and hearing the submissions of the parties, it has come on record that while the complainant/ respondent has been examined, the Trial is still at the stage of Complainant's evidence. It is pertinent to note that the Protection of Women from Domestic Violence Act is a beneficial legislation intended to protect the rights of women guaranteed under the Constitution. Further, it is not the case that the present petitioners were impleaded later. As noted above, the summons were already issued. Considering the above-mentioned principles and the fact that there are specific allegations against Petitioner No. 2 and 3, I find no ground to interfere with the order of the Sessions Court.

8. Accordingly, the petition stands dismissed along with pending application.

MANOJ KUMAR OHRI, J

JULY 15, 2024/rd