



2024:DHC:4040



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 16.05.2024*+ CRL.REV.P. 656/2024
MOHD. SHUEB

..... Petitioner

Through: Mr.Abhishek Jain, Ms.Neelima
Kant, Mr.Rampratap Kaushal &
Mr.Aalim, Advs.

versus

FAYZA NISAR & ANR.

..... Respondents

Through: None.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)****CRL.M.A. 15158/2024 (Exemption)**

1. Allowed, subject to all just exceptions.

**CRL.REV.P. 656/2024 & CRL.M.A. 15157/2024 &
CRL.M.A. 15159/2024**

2. This petition has been filed under Section 397 read with Section 401 and Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), challenging the Judgment dated 30.06.2023 passed by the learned Judge, Family Court, North-East District, Karkardooma Courts, New Delhi (in short, 'Family Court') in MT No. 41/2021, directing the petitioner to pay a consolidated sum of Rs.45,000/- as maintenance to the respondents, that is, Rs.25,000/- and Rs. 20,000/- per month to respondent no.1 and respondent no.2 herein, respectively, with



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effect from the date of filing of the petition under Section 125 of the Cr.P.C. by the respondents, that is, 23.01.2021, and till the date the respondent no.1 is remarried or is gainfully employed, whichever is earlier. The said order has been passed after the petitioner was proceeded *ex-parte* vide order dated 07.10.2021.

3. The learned counsel for the petitioner submits that the above order has been obtained by the respondents by forging documents and making false averments in the petition filed under Section 125 of the Cr.P.C.

4. He submits that the petitioner had engaged a counsel to represent his interest in the complaint case, however, the counsel did not contest the case. He later filed an application under Order IX Rule 13 read with Section 151 of the Code of Civil Procedure, 1908 (in short, 'CPC') seeking setting aside of Order dated 30.06.2022, which was also dismissed by the learned Family Court vide order dated 11.01.2024. The observation of the learned Family Court in this order is reproduced below:

"16. Now coming to the application under Order IX Rule 13 CPC. The ex-parte decree can be set aside on the ground that respondent was prevented from sufficient cause in appearing before the Court and or notices were never served upon the respondent.

17. In the present case, it is the admitted case of the respondent that he was served with the notice of the petition as para 3 of the application categorically states that when the first notice of the petition was served he



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contacted the petitioner. The relevant para of the application is reproduced as under:-

"That when the first notice of the main petition of the petitioners was served upon the respondent, he contacted the petitioner as to why she has filed the case when she is being maintained properly and that she is residing separately at her own freewill and wish, then she stated that she would continue to keep in touch with the respondent and would also withdraw the case. The respondent remained under the impression that the petitioner would have withdrawn the case as he was regularly making the payment of maintenance of Rs.5,000/- per month to the petitioner and the child and she used to visit the respondent often. But infact, she kept the respondent in dark as she never withdrew the case despite receiving maintenance from the respondent and even succeeded in obtaining an ex-parte order/decreed of maintenance in her favour and the child. The respondent only came to know about the said fact, when he receive the notice of the present execution petition and his counsel made him aware of the facts. The said act of the petitioner is totally against the law. If the petitioner wouldn't have taken the respondent under her confidence/influence, then surely the respondent would have been contesting the matter and would have been able to bring everything before the Hon'ble Court and the order of maintenance wouldn't have been passed in view of the facts and circumstances."

18. In view of the averments made, it leaves no room for doubt that in fact respondent was served with the notice of the petition. Even otherwise on perusing the record of MT No. 41/2021, it is clear that summons were served upon the respondent on 17.03.2021 in the



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presence of witness Salman and Ismail. Despite service, respondent chose not to appear, and was proceeded ex-parte vide order dated 07.10.2021. The ex-parte judgment was passed on 30.06.2022.

19. It was contended that respondent was prevented from appearing in the Court on the ground of assurance given by the petitioner that she would withdraw the present petition. The reasons given by the respondent that he was prevented from appearing in the Court on ground of misrepresentation by the petitioner is wholly misconceived as it has come on record that respondent had filed a petition seeking divorce before Family Court, Muzaffar Nagar UP titled as 274/2020, transfer petition was filed by the petitioner herein and vide order dated 13.12.2022, the transfer petition was allowed. The parties were litigating, therefore, the question of misrepresentation by the petitioner and upon her representation respondent believing the same is not possible. The applicant had chosen not to appear before this Court for reasons best known to him. The plea also stands rejected. Thus, no ground is made out to set aside the exparte decree. The application stands dismissed."

5. Meanwhile, another petition was filed by the petitioner herein under Section 482 Cr.P.C., challenging the order dated 30.06.2022, which was withdrawn with liberty to file afresh. At the outset, it is noticed and mentioned that the copy of the said petition that was filed under Section 482 Cr.P.C. by the petitioner herein or the order passed in the said petition, have not been placed before this court in the present petition. The learned counsel for the petitioner submits that this is due to inadvertence.



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6. Be that as it may, as noted hereinabove, the respondents had filed the petition under Section 125 Cr.P.C. on 23.01.2021. The petitioner was proceeded *ex parte* in the same vide order dated 07.10.2021 passed by the learned Family Court. Though the petitioner in the present petition alleges that due to misguidance he was not able to follow or attend the proceedings and was in the dark about the ongoing proceedings against him and has now sought to place the blame of the same on the counsel who was then representing him, he does not deny that he was duly served with the notice issued by the Family Court. This plea is even otherwise different from the one taken before the learned Family Court, as is reflected from the order dated 11.01.2024 of the Family Court reproduced herein above.

7. To a pointed query of this Court as to whether the petitioner has taken any action against the earlier counsel, the learned counsel for the petitioner fairly admits that no complaint has been filed against the earlier counsel. Even otherwise, the blame for the non-appearance of the petitioner cannot be fully placed only on the shoulder of the counsel. It is a well settled principle of law that a litigant owes a duty to be vigilant about the judicial proceedings pending against it in the court of law. Reference in this regard can be made to the judgment of this court in ***Delhi Waqf Board v. Mohd Bi. And Ors.*** 2019 SCC OnLine Del 7178. The petitioner should have been vigilant in the present case, especially as it was filed against him for seeking maintenance by the respondents and was in the form of



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a criminal proceeding.

8. I, therefore, find the explanation given by the petitioner to be completely frivolous and not worth accepting.

9. As far as the plea of the petitioner that the respondents have forged documents or have misguided the learned Family Court, this plea cannot be taken by the petitioner in the present proceedings, especially after choosing not to defend the complaint before the learned Family Court.

10. For the reasons stated hereinabove, I do not find any merit in the present petition.

11. The same is accordingly dismissed.

12. There shall be no order as to cost.

NAVIN CHAWLA, J

MAY 16, 2024/rv/am

Click here to check corrigendum, if any