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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 72/2019, CRL.M.A. 1241/2019 & CRL.M.A. 1242/2019**
SHUBHAM VYAS & ORSPetitioners

Through: Mr. Nipun Manocha, Advocate

versus

SHIVANGI GUBERELERespondent
Through:

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
19.02.2025

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1. The present petition filed under Section 397 of Code of Criminal Procedure, 1973 is directed against order dated 20th August, 2018 passed by the Special Judge (PC Act) CBI, East District, Karkardooma Courts in Criminal Appeal No. 94/2018. Through the impugned order, the appeal preferred by the Petitioner against order dated 9th July, 2018 passed by Metropolitan Magistrate (Mahila Court-02), East, Karkardooma Courts, Delhi in CC No. 636/2017, was dismissed. As a result, the Petitioners' right to file a reply was closed.

2. The order passed by the Metropolitan Magistrate on 9th July, 2018 reads as follows:

"Proxy counsel for the respondent seeks adjournment for filing reply on behalf of all the respondents as well as income affidavit of R1.

Perusal of record shows that despite directions vide last order to file reply within two weeks, respondents have failed to comply with the last order. Even today respondents have failed to file their reply along with affidavit of R-1 and are seeking adjournment again for the



compliance of last order, without furnishing any plausible reason for same.

Considering that despite repeated opportunities respondents have failed to file their reply as well as income affidavit of respondent no. 1, I am constrained to close the right of the respondents to file reply to the main application of petitioner and accordingly, their defence stands struck off.

Put up for PE on 19.09.2018. Petitioner is directed to file evidence by way of affidavit with advance copy to the other side within four weeks."

3. The afore-noted order was passed by Metropolitan Magistrate as despite repeated opportunities, the Petitioners failed to file their reply and income affidavits.

4. In appeal, the Appellate Court examined the contention of the parties and affirmed the findings of the Metropolitan Magistrate observing as follows:

" 5. I have gone through the certified copies of ordersheets passed in this case by the trial court. It appears from these ordersheets that this case was received in the trial court on 28.02.2017. Thereafter, vide order dated 01.04.2017 direction was given to issue notice to all the appellants herein. On behalf of appellants herein, vakalatnama was filed before trial court on 18.11.2017 and opportunity was sought to file reply as well as affidavits. This request was accepted and case was fixed for 07.03.2018. Though, Id. Presiding Officer was on leave on 07.03.2018, but neither reply nor affidavit was filed by appellants herein. The case was again fixed for 05.05.2018, however, even on this date neither reply nor income affidavit were filed by appellants. Ld. MM recorded this fact and provided one more opportunity to the appellants so as to file the reply and income affidavit within two weeks with advance copy of the same to the respondent herein. The case was thereafter, fixed for 09.07.2018. On 09.07.2018 none of appellants appeared before trial court and one proxy counsel had appeared on behalf of appellants, who sought adjournment for filing today as well as income affidavit of appellant no.1. Ld. MM noted that despite directions given on last date of hearing to file such reply within two weeks, appellant had failed to comply with such order and they even did not file such reply and affidavit on that day i.e. 03.07.2018. It was further noted by Ld. MM that adjournment was sought without furnishing any plausible reason. Taking note of such fact and circumstances id. MM observed that she was constrained to close the right of appellants herein to file reply and thus, matter was fixed for PE.

6. Ld. counsel for appellants was asked to explain the illegality in this order,



but he conceded that the order cannot be termed as 'illegal'. The only contention had been made before me that one more opportunity could have been given and the matter could have been passed over. It is unfortunate that despite repeated observations made by higher courts for ensuring speedy disposal of cases, sufficient message is not being taken by all. In this case, the appellants had the time since 18.11.2017 till 09.07.2018, but even so much of time period proved insufficient for the appellants to prepare and file their reply and affidavits. Apparently, this is totally unreasonable conduct on the part of appellants and only inference can be raised that there had been more interest to delay the proceedings.

7. During arguments, ld counsel for appellants took another plea that prior to 09.07.2018, some talk of settlement was initiated by complainant/respondent herein. However, I am unable to be persuaded by such submissions because had it been so then the appellants could have approached the trial court with same plea within two weeks from 05.05.2018, so as to seek to defer the time limit for filing reply and affidavit. The appellants were duty bound to file their reply and income affidavit up to 19.05.2018 and they had to be conscious of the fact that it was an extended opportunity given to them. Unfortunately, appellants and their counsel did not bother to take such direction of the court in the true spirit of letters, rather a misleading plea has been taken before this court that proxy counsel had sought passover, which is contrary to the judicial order. The impugned order mentions it in very categorical manner that requests for adjournment was sought without furnishing any plausible reason for the purpose of filing reply and affidavit. There cannot point of 'one more opportunity. No litigant has any vested keep seeking 'one more opportunity. Therefore, I find that the order passed by ld. MM was perfectly justified in the given circumstances of the case. One cannot be oblivious of the legal mandate to decide such cases within limited time and the endeavour of the court has to be to conclude the proceeding at the earliest possible time. The opportunities are to be given to the litigants by the court, but same cannot be imposed upon them, It is for the litigants and their counsel to avail the opportunities with all due diligence. If they fail to do so. They Cannot blame the court for their own deliberate inaction. Therefore, I do not find any merit in the contentions raised on behalf of appellants nor any legal infirmity in the impugned order. Hence appeal is dismissed."

5. At the outset, the Court has queried from counsel for the Petitioners regarding the stage of the proceedings under the Protection of Women from Domestic Violence Act, 2005. In response, both the counsel informed that the matter is now at the stage of final arguments. Additionally, it is submitted that although the proceedings before the Trial Court have not been



stayed, yet the Trial Court has not awarded the final decision.

6. Counsel for the Petitioners emphasises that the non-appearance before the Court was on account of the counsel being held up in another matter before this Court on 9th July, 2018 when the impugned order by the Metropolitan Magistrate was passed.

7. In the opinion of the Court, since the matter has now progressed substantially, allowing the Petitioners' request at this juncture would upset the trial proceedings. Further, the engagement of the counsel on the date of hearing is no excuse for the Petitioners for not filing their response/reply and their income affidavits despite repeated opportunities granted to them.

8. Accordingly, the Court finds no merit in the present petition and the same is dismissed, along with pending applications.

SANJEEV NARULA, J

FEBRUARY 19, 2025/ab