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

+ **CM(M) 321/2025**

HIMANSHU SHEKHAR

.....Petitioner

Through: Mr. Siddharth Arora, Adv
versus

MAMTA SHEKHAR

.....Respondent

Through: Ms. Shristi Borthakur, Adv

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

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17.02.2025

CM APPL. 8550/2025 & CM APPL. 8551/2025 (Exemption)

Allowed, subject to all just exceptions.

Both the applications stand disposed of.

CM(M) 321/2025 & CM APPL. 8552/2025 (Stay)

1. Petitioner filed an appeal under Section 19 of the Family Courts Act 1984 assailing the order dated 12.12.2024 passed by learned Judge, Family Courts, Patiala House Courts, New Delhi in *HMA No. 549/2020* titled as *Mamta Shekhar v Himanshu Shekhar*.
2. Later this appeal was converted as a petition under Article 227 of the Constitution of India.
3. Petitioner is the respondent in the Divorce Petition filed under Section 13 (1) (a) of Hindu Marriage Act, 1955 [“Act”] filed on the ground of cruelty.
4. The petitioner challenges the order dated 12.12.2024 whereby the learned Family Judge dismissed the petitioner’s application to take the list of



witnesses on record.

5. The impugned order reads as under:-

“12.12.2024

Present: Ms. Shristi Borthakur, Ld. Counsel for the petitioner in
courtroom with petitioner connected through VC.
Sh. J.K. Jha, Ld. Counsel for the respondent.

Evidence affidavit of respondent has come on record.
Copy already stands supplied.

Today, matter is listed for examination and cross-examination of the respondent, however, adjournment is prayed for on behalf of respondent stating that respondent had to undergo mandatory training program and, therefore, he did not get leave.

Respondent has also filed an application u/S 151 CPC for taking on record list of witnesses along with list of witnesses wherein he has cited 07 more witnesses apart from himself.

In the present matter, issues were framed on 02.12.2021 and, therefore, technically he should have filed the list of witnesses within 15 days from the said date. The present application has been filed almost 03 years after framing of issues and that too without any explanation. Apart from this, the purpose for which those witnesses are sought to be examined has not been mentioned in the application except that they would support the stand of the respondent. Hence, in view of both the reasons, the present application is dismissed.

It is made clear that dismissal of application of respondent u/S 151 CPC for taking on record list of witnesses does not be read as rejection of respondent's right to examine himself.

Put up for examination and cross-examination of respondent on 21.01.2025 and 22.02.2025.”

6. Learned counsel for the petitioner submits that list of witnesses was filed on 19.10.2024 in compliance of the Court's previous order dated 20.07.2024 which directed the petitioner to file the list of witnesses alongwith advance copy of evidence affidavit of the witnesses to the opposite party at least 15 days prior to the next date of hearing.

7. Learned counsel for the petitioner submits that petitioner is a BSF Commandant, posted at Jaisalmer, Rajasthan and made all possible endeavours to comply with the Court's directions and sent the list of



witnesses by email to the counsel on 15.10.2024. But the Family Court refused to entertain the application on record due to short delay and the list of witnesses were not taken on record.

8. Learned counsel for the respondent submits that petitioner did not duly comply with the directions issued by the learned Trial Court in as much as list of witnesses was not submitted within the stipulated period and advance copy of the affidavits of witnesses were also not provided.

9. It is evident from the order dated 20.07.2024 that learned Family Court had granted opportunity to petitioner to file the list of witnesses alongwith advance copy of the evidence affidavits of the witnesses to the respondent at least 15 days prior to the next date of hearing. Once, the Court had granted time to the petitioner to place the list of witnesses, it should not have dismissed the application on account of the same not having been filed without a period of 15 days from the date of framing of issues.

10. No doubt, there has been delay of few days in submitting the list of witnesses in terms of order dated 20.07.2024 and advance copy of evidence affidavits were also admittedly not supplied.

11. Right to lead evidence is a valuable right and if not granted, the petitioner may suffer irreparable loss by not being able to put forth his defence.

12. Keeping in view of the aforesaid, the Court is inclined to grant one more opportunity to the petitioner to place on record his list of witnesses duly explaining the relevancy of each and every witness. The said list of witnesses to be filed within 15 days.

13. The Trial Court will be at liberty to consider the necessity and relevance of such witnesses before granting permission to summon them.



14. Divorce Petition is stated to be pending since last about five years, learned Trial Court is therefore, directed to make all best possible endeavours to dispose of the petition as expeditiously as possible. The petition is disposed of in terms of above order.

15. Copy of this order be given *dasti* under the signature of Court Master.

RAVINDER DUDEJA, J

FEBRUARY 17, 2025

Sk/f