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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of Decision: 18th March, 2025***
+ **CM(M) 505/2025 & CM APPL. 15569/2025**

ASHISH SHARMA

.....Petitioner

Through: Mr. Sahil Sharma with Mr. Abhishek
and Ms. Mamta, Saini, Advocates.

versus

VIDUSHI PATHAK

.....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN
JUDGMENT (oral)

1. Petitioner is aggrieved by order dated 29.01.2025 whereby the respondent i.e. his wife has been given an opportunity to contest the matter.
2. Petitioner had filed a petition seeking divorce on the ground of cruelty and desertion as envisaged under Section 13(1) (i-a) and (i-b) of Hindu Marriage Act, 1955.
3. The above said petition was filed before the learned Principal Judge, Family Court, SAS Nagar, Mohali. However, on the basis of a Transfer Petition filed by respondent wife, the Hon'ble Supreme Court directed the above said case to be transferred from Punjab to the Court of Principal Judge, Family Court, North District, Delhi.
4. Accordingly, the file was sent to Delhi by the learned Principal Judge,



SAS Nagar on 16.09.2023.

5. Such case was received by the learned Judge, Family Court, North District on 23.09.2023.

6. Petitioner kept on appearing before the learned Judge, Family Court but there was no appearance from the side of the respondent Wife. This Court has also seen orders dated 16.11.2023 and 15.01.2024.

7. When the matter was taken up by the learned Judge, Family Court, North, Rohini on 29.01.2024, keeping in mind the absence of the respondent and the fact that the abundant opportunities had already been granted to her to file reply, her opportunity to file reply was closed and her defence was also struck off.

8. Fact remains that thereafter respondent appeared and when the case was at the stage of final arguments, she moved an application under Order IX Rule 13 CPC seeking to set aside order dated 29.01.2024.

9. Learned Judge, Family Court observed that though she had not been able to demonstrate any plausible or justifiable ground for her non-appearance, instead of indulging into technicalities, she was given an opportunity to contest the matter and her application was allowed, subject to cost of Rs. 10,000/- and her written statement was, accordingly, directed to be taken on record.

10. Petitioner husband is aggrieved by such order.

11. It is contended that despite the fact that the application had been moved under a wrong provision and despite that fact that there was no reason made out by the respondent, justifying her previous non-appearance, the Court has given undue indulgence to her.

12. This Court cannot be oblivious of the fact that the above said case was



received on transfer. Though, the transfer petition had been filed by wife and she should herself have been extra-vigilant and careful in defending the case and, ideally, she should have appeared before the learned Judge, Family Courts, North District, the moment the file was received from Punjab, this Court does not find any reason to interfere with the order.

13. On the contrary, in such type of matrimonial matters, the endeavor should be to decide the matter on merits, instead of, on technical aspects.

14. This Court is also conscious of its limited scope of appreciation and judicial interference in any such petition filed under Article 227 of the Constitution of India.

15. As per, *Puri Investments Versus Young Friends and Co. and Others*: 2022 SCC OnLine SC 283, the duty of the supervisory Court is to interdict if it finds that the findings are perverse i.e. (i) Erroneous on account of non-consideration of material evidence, or (ii) Being conclusions which are contrary to the evidence, or (iii) Based on inferences that are impermissible in law. Reference be also made to *Estralla Rubber v. Dass Estate (P) Ltd.*: (2001) 8 SCC 97; *Garment Craft vs. Prakash Chand Goel*: (2022) 4 SCC 181 and *Ibrat Faizan v. Omaxe Buildhome Private Limited*: (2023) 11 SCC 594.

16. The learned Judge, Family Court has merely exercised its discretionary power and in the given circumstances, this Court does not find any real requirement of invoking its such supervisory powers, particularly when, there is no perversity, as such, in the order. Merely because the opportunity to contest was given and discretion was exercised in favour of respondent would not, *ipso facto*, indicate any illegality necessitating interference by this Court.

17. Moreover, it also needs to be highlighted that for causing delay in the matter, the cost has already been imposed and thus, the other side has been



duly compensated as well.

18. Finding no merit or substance in the present petition, the same is hereby dismissed. However, learned Judge, Family Courts shall ensure that in future, no request for unwarranted and unnecessary adjournment is entertained from the side of respondent.

19. Pending applications, if any, also stand disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

MARCH 18, 2025/sw/js