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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 17.05.2023.

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CM(M) 34/2023 & CM APPL. 1100/2023 -Stay.

SMT. CHETNA RATHEE

..... Petitioner

Through: Mr. Prateek Goswami, Adv. , Mr.
Neeraj Gupta and Mr. Rajat Asija,
Adv.

versus

SH. CHAHIT KUNDU

..... Respondent

Through: Mr. Shailender Dahiya, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present petition preferred by the estranged wife, who is the respondent in HMA No. 711/2019 seeks to assail the order dated 18.10.2022 passed by the learned Family Court. Vide the impugned order, the learned Family Court has rejected the petitioner's application seeking restoration of her right to cross examine her husband, who had appeared as PW-1.
2. Learned counsel for the petitioner submits that the learned Family Court has rejected the petitioner's application seeking restoration of her right to cross examine the respondent, who was examined as PW-1 without appreciating the fact that the petitioner had been granted only one opportunity to cross-examine him on 30.05.2022, on which date, the petitioner's counsel had sought time as he had not been provided with a copy of the respondent's affidavit (PW-1's evidence

by way of an affidavit).

3. Furthermore, the petitioner's counsel on the said date was required to attend to a matter before this Court and had therefore sought an adjournment, which request was denied without any justifiable reasons and her right to cross-examine PW-1, who was the most crucial witness, closed on the very same day. The petitioner's application seeking permission to cross examine the respondent, moved on the very same date, was rejected on 25.07.2022, compelling the petitioner to move another application seeking restoration of her right to cross examine the PW-1 which has also been rejected vide the impugned order.
4. He submits that while passing the impugned order, the learned Family Court failed to appreciate that the matter was for the first time, listed for the evidence of the respondent on 20.04.2022, on which date, the same was transferred from one Court to another. It is only on this count that the petitioner could not be represented through counsel on the said date when the matter was adjourned to 30.05.2022, on which date, the Court hastened to close her right to cross examine the respondent, PW-1. The petitioner's request for restoration of her right to cross-examine the respondent was rejected even though she had offered to pay costs for the inconvenience caused to the respondent.
5. On the other hand, Mr. Dahiya, learned counsel for the respondent supports the impugned order by contending that once it was found that not only was the petitioner taking contradictory stands before the Court, but even her counsel had been adopting a defiant attitude, the learned Family Court was justified in rejecting her application seeking

recall of PW-1 for cross-examination. He further submits that a copy of the evidence by way of the respondent's affidavit had been duly forwarded on the registered e-mail id of the petitioner's counsel on 12.04.2022 itself and therefore his plea that a copy of the same was not available with him on 30.05.2022 was rightly disbelieved by the learned Family Court. He, therefore, prays that the petition be dismissed.

6. Having considered the submissions of the learned counsel for the parties and perused the record, even though I find that the manner in which the matter was conducted on behalf of the petitioner before the learned Family Court, cannot be appreciated, the fact remains that it was only on one date, i.e., 30.05.2022, that the petitioner had failed to carry out the cross examination of PW-1. It needs to be noted that it is not even the respondent's case that the matter was earlier fixed for cross-examination or that the petitioner had been taking repeated dates for the said purpose. I am of the considered view that even if the plea of the petitioner's counsel about his not having received the evidence by way of affidavit through e-mail or of being busy in a matter before this Court were to be discarded, the learned Family Court ought to have appreciated that grave and irreparable prejudice would be caused to the petitioner by closing her right to cross examine PW-1, who was admittedly the most crucial witness in the case. In matters like the present when the Court is dealing with petitions pertaining to Family Law, where the parties are already at loggerheads with each other, even though the matters are required to be decided expeditiously, the Court is expected to not adopt such a

hyper-technical approach and close the right of the parties to cross-examine in such a hurried manner.

7. I am, therefore, of the view that the petition deserves to be allowed and the petitioner should be granted one opportunity to cross examine the respondent/PW-1. Taking into account the averments made by the petitioner and her counsel in the pleadings, the same has to be only subject to costs of Rs.25,000/-. Both sides agree that this amount be paid to any deserving widow who lost her husband during the pandemic of Covid-19.
8. The impugned order is, accordingly, set aside subject to payment of costs of Rs.25,000/-. The petitioner is directed to pay the aforesaid costs to Smt. Preeti Singh Solanki, an unemployed widow who lost her husband during the Covid-19 pandemic by remitting the same in her Bank Account No. 5745470231, IFSC Code- KKBK0004618, CRN- 457721571, maintained with the Kotak Mahindra Bank.
9. The petitioner is, subject to payment of costs as directed hereinabove, granted one opportunity to cross examine PW-1. Since the matter is stated to be listed before the learned Family Court on 24.07.2023 for further proceedings, the respondent/PW-1 will remain present on the said date for cross-examination by the petitioner's counsel. It is made clear that the learned Family Court will not grant any adjournment to the petitioner for the purpose of cross-examination and in case she/her counsel fails to cross-examine the respondent/PW-1 on 24.07.2023, i.e., the next date, no further time will be granted to the petitioner.
10. However, in case, the learned Family Court finds that the cross examination of PW-1 cannot for any justifiable reasons, be concluded

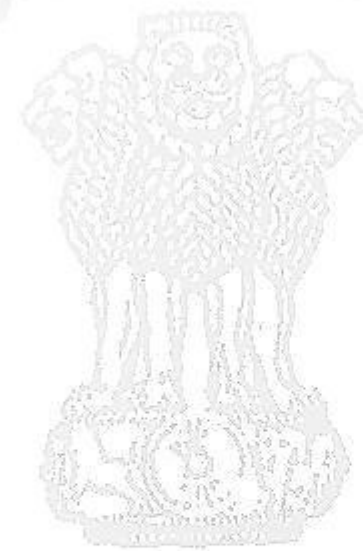
on the same date, it will be open for the learned Family Court to grant another date for completion thereof.

11. The petition stands disposed of in the aforesaid terms.

(REKHA PALLI)
JUDGE

MAY 17, 2023

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