

**Sunita vs.sanjay Kumar**

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**Court :** Delhi

**Decided On :** Oct-13-2017

**Appellant :** Sunita

**Respondent :** Sanjay Kumar

**Judgement :**

§~5. \* IN THE HIGH COURT OF DELHI AT NEW DELHI + MAT.APP.(F.C.) 178/2017 and CM APPL. 36762-63/2017 1. SUNITA ..... Appellant Through: Mr. Shailender Dahiya, Advocate versus SANJAY KUMAR Through: None ..... Respondent CORAM: HON'BLE MS. JUSTICE HIMA KOHLI HON'BLE MS. JUSTICE DEEPA SHARMA % The present appeal has been filed by the appellant/wife against an

ORDER

1310.2017 order dated 13.09.2017 passed by the learned Family Court, dismissing her application for seeking review of an order dated 01.03.2017, whereby an earlier application filed by her under Section 151 CPC for permission to examine a witness (Shri Jitender), was dismissed.

2. It is deemed necessary to briefly refer to the relevant sequence of events in the present case. The respondent/husband filed a petition under Section 11 of the Hindu Marriage Act praying inter alia for a decree of nullity of marriage against the appellant/wife. After the pleadings were completed, the parties had filed their respective list of witnesses. Counsel for the appellant states that the appellant had

cited seven witnesses in her list of witnesses and out of the said witnesses, she had examined herself as RW-3, her father, Shri Mahavir Singh as RW-1 and a neighbour, Shri Ishwar Singh Page 1 of 4 MAT.APP.(F.C.) 178/2017 as RW-2. Though the said list of witnesses had cited the names of four other persons, including one Shri Krishan Chander, the appellant did not file his affidavit by way of evidence along with the other witnesses.

3. Thereafter, the appellant moved an application before the Family Court under Section 151 CPC, for permission to examine a witness by the name of Jitender, who happens to be the brother-in-law of the respondent (sisters husband). The said application was dismissed by the Family Court vide order dated 01.03.2017, wherein it was observed that there is a marital discord between Shri Jitender and the respondents sister and they have been living separately and the appellant/wife seeks to produce the said witness as he has been won over by her and would be ready to depose against the respondent.

4. Aggrieved by the dismissal of the aforesaid application, the appellant had preferred an appeal before the High Court, registered as MAT.APP.(F.C.) 51/2017, which was dismissed in limine by the Division Bench vide order dated 12.04.2017, while observing therein that the matter was at the stage of final arguments on 26.04.2017 and at that belated stage, the appellant could not be permitted to seek leave to produce another witness, namely, the brother-in-law of the respondent, only to fill up vacuum/lacuna in her evidence. It was also observed on a perusal of the order sheets of the proceedings before the Family Court that the appellant had been adopting all kinds of dilatory tactics, which attempt ought to be curbed with a firm hand.

5. Though the appellant chose not to file any appeal before the Supreme Court against the order dated 12.4.2107, she went back to the Family Court and moved a fresh application under Section 114 read with Section Page 2 of 4 MAT.APP.(F.C.) 178/2017 151 CPC, for seeking review of the order dated 01.03.2017 that had been tested by the Division Bench in MAT.APP.(F.C.) 51/2017 and duly upheld.

6. Learned counsel for the appellant submits that twofold prayers were made in the said application, one for reviewing the order dated 01.03.2017 and the other for being granted permission to examine one Shri Krishan Chander as a witness.

7. By the impugned order dated 13.09.2017, the prayer made for examining any further witness was rejected by the learned Family Court, in view of the fact that the evidence of the respondent was closed on 01.03.2017. Notice was also taken of the casual manner in which the petition was being defended by the appellant and the number of opportunities taken by her only to delay the proceedings, by changing her counsel more than thrice and seeking several adjournments on other counts.

8. We may note that the evidence of the respondent/husband was closed as long back as on 04.03.2016 and after the passage of almost one year, the respondents evidence came to be closed by the learned Family Court on 01.03.2017, after she had examined herself and two other witnesses. It is noteworthy that Mr. Krishan Chander, who the appellant has sought leave to produce as an additional witness, was duly cited by her in the list of witnesses but his affidavit by way of evidence was not filed alongwith the affidavits of the other witnesses. Though the said witness was not required to be summoned through court proceedings but only produced by the appellant on her own for recording his evidence, he did not present himself on 01.03.2017, the date on which the appellants evidence was finally closed. The records reveal that the affidavit of Mr. Krishan Chander was sought to be filed by the appellant only on 20.04.2017, by which date her Page 3 of 4 MAT.APP.(F.C.) 178/2017 evidence was closed. By now, arguments have already been addressed by the respondent in the main petition and the matter was listed before the Family Court on 09.10.2017, for the appellant to address arguments but an adjournment was sought on the ground that the present appeal has been filed by her. Now, the matter is listed before the Family Court on 24.10.2017, for the appellant to address her arguments.

9. Given the above facts and circumstances, we are of the opinion that the present appeal is a gross abuse of the process of the court and yet another attempt on the part of the appellant to somehow or the other delay the proceedings before the

Family Court. The Division Bench had already taken an adverse notice of the conduct of the appellant in the earlier appeal filed by her and frowned upon the dilatory tactics adopted by her. However, the court had refrained from imposing any costs on the appellant while dismissing her appeal in limine. This time, it is deemed appropriate to dismiss the present appeal in limine with costs of Rs.10,000/- imposed on the appellant to be paid to the respondent on the next date of hearing fixed before the Family Court.

10. The appeal is dismissed alongwith the pending applications. OCTOBER13 2017 rkb/ap MAT.APP.(F.C.) 178/2017 HIMA KOHLI, J DEEPA SHARMA, J Page 4 of 4

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