

D vs.A

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Court : Delhi

Decided On : Jul-04-2018

Appellant : D

Respondent : A

Judgement :

§~5 * % + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

04. h July, 2018 CM(M) 274/2018 D A Through: Mr.Prag Chawla, Sudeep Sudan and

... Petitioner

Mr.Puneet Jain, Advocates versus Through: Respondent CORAM: HON'BLE MR. JUSTICE J.R. MIDHA JUDGMENT (ORAL) 1. The petitioner instituted a petition for dissolution of marriage against the respondent under Section 13(1)(ia) and (ib) of the Hindu Marriage Act on 12th January, 2015 in which the Family Court issued the notice to the respondent on 14th January, 2015.

2. On 5th January 2016, the petitioner filed an application under Order V Rule 9 of the Code of Civil procedure for serving the respondent by e-mail which was allowed by the Trial Court and Court issued notice by e-mail as well as by Courier.

3. The petitioner served the respondent by e-mail at the e-mail address, aviseth@gmail.com and the certificate under Section 65B of the Indian Evidence Act along with computer printouts of the e-mails were filed by the petitioner before

the Family Court on 30th March, 2016. The petitioner also CM(M) 274/2018 Page 1 of 3 placed on record the courier receipts as well as tracking report of courier service, according to which the notice was delivered to the respondent on 28th July, 2016 at 12:31 hours.

4. On 07th November, 2016, the learned Family Court proceeded ex- parte against the respondent and fixed the case for recording of the ex-parte evidence on 31st January, 2017.

5. On 17th April, 2017, the petitioner submitted the ex-parte evidence and the case was listed for ex-parte arguments on 5th June, 2017.

6. On 5th June, 2017, there was change in the Presiding Officer of the Family Courts. The new Presiding Officer vide order dated 28th August, 2017 reopened the service of the respondent and directed the petitioner to file the affidavit of service which was filed by the petitioner on 22nd September, 2017. On 22nd September, 2017, the learned Family Court issued Court notice to the courier service i.e. M/s DTDC Express Ltd. to prove the tracking report.

7. Learned counsel for the petitioner submits that the respondent had been duly served and the learned Family Court preceded ex-parte against the respondent after satisfying the service of the respondent. It is further submitted that there was no occasion for the Family Court to reopen the issue of service at the stage of final arguments.

8. The records of the Family Court have been perused. This Court is of the view that the respondent has been duly served before the Family Court and the Court notice issued to the courier service by the Family Court was not warranted.

9. The petition is allowed and the order dated 22nd September, 2017 of the Family Court is hereby set aside. CM(M) 274/2018 Page 2 of 3 10. The Family Court shall fix the case for final arguments.

11. Considering the delay of about 10 months by the Family Court, the Family Court is directed to expedite the hearing of the divorce petition.

12. Copy of this judgment be given dasti to counsels for the parties under the signature of Court Master. JULY04 2018 ds J.R.MIDHA, J.

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