

A vs.m

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SooperKanoon Citation : sooperkanoon.com/1216352

Court : Delhi

Decided On : Jul-23-2018

Appellant : A

Respondent : M

Advocate for Pet/Ap. : Mr. Harsh Vardhan Pandey

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

23. d July, 2018 \$~FM-10 * % + CM(M) 414/2018 & CM No.13871/2018 A M

... Petitioner

Through: In person versus Through: Mr. Harsh Vardhan Pandey, Advocate
Respondent along with petitioner in person. CORAM: HON'BLE MR. JUSTICE
J.R. MIDHA

JUDGMENT

(ORAL) 1. The petitioner has challenged the order dated 09th January, 2018 whereby the learned Family Court restored the respondents petition.

2. The parties were married on 16th February, 2005. In September, 2007, the respondent - husband filed a petition for divorce on the ground of cruelty which was dismissed in default on 22nd January, 2013. The respondent filed an application for restoration on 05th February, 2013 i.e. within 30 days of the

dismissal. The learned Family Court allowed the restoration application subject to cost of Rs.5,000/-.

3. The petitioner present in person submits that the respondent is irregular in paying the maintenance to her. It is submitted that the respondent has not paid the maintenance of Rs.35,000/- for the month of July, 2018. It is further submitted that the maintenance being paid by the respondent is on a lower side. The petitioner, however, admits having CM(M) 414/2018 Page 1 of 3 received the cost of Rs.5,000/- imposed by the learned Family Court.

4. Learned counsel for the respondent submits that on 22nd January, 2013, the divorce petition was listed before the Family Court at Tis Hazari Courts. It is submitted that the petitioner filed an application under Section 125 Cr.P.C. which was also listed before the Family Court at Saket on 22nd January, 2013. It is submitted that the respondent appeared before the Family Court at Saket on 22nd January, 2013 and by the time, he reached the Family Court at Tis Hazari Courts, the divorce petition had already been dismissed. It is further submitted that the restoration application has been filed within 30 days of the dismissal order. It is further submitted that the petitioner filed an application for maintenance under Section 24 of the Hindu Marriage Act which was dismissed by the learned Family Court vide order dated 15th March, 2010 which was challenged by the petitioner before this Court in CM(M) 910/2010 which was allowed and vide order dated 08th November, 2014, this Court directed the respondent to pay maintenance of Rs.60,000/- per month in addition to Rs.10,000/- being paid to the petitioner in the proceedings under Domestic Violence Act. The respondent challenged this order before the Supreme Court and the Supreme Court vide order dated 30th March, 2017 reduced the maintenance to Rs.25,000/- per month in addition to Rs.10,000/- being paid in proceedings under the Domestic Violence Act. It is submitted that the petitioner has paid up to date maintenance @ Rs.35,000/- per month in terms of the Supreme Court order. It is submitted that the maintenance for the month of July, 2018 has been transferred to the petitioners account yesterday.

5. The petitioner again submits that the respondent is not paying maintenance regularly which is disputed by the learned counsel for the CM(M) 414/2018 Page 2

of 3 respondent who submits that the petitioner is delaying the proceedings before the Family Court. It is submitted that the Supreme Court has directed the Family Court to dispose of the petition within nine months out of which six months period has already expired.

6. This Court is of the view that the respondent has shown sufficient cause for non-appearance on 22nd January, 2013 when the petition was dismissed in default and there is no infirmity in the impugned order whereby the learned Family Court has allowed the restoration application.

7. There is no merit in this petition which is hereby dismissed. The pending application is disposed of.

8. The petitioner present in person seeks enhancement of the cost of Rs.5,000/- awarded by the Family Court. The cost of Rs.5,000/- imposed by the Family Court is enhanced to Rs.15,000/-.

9. The petitioner submits that the respondent be directed to transfer the additional cost to her savings bank account with HDFC Bank, New Friends Colony branch. The respondent undertakes to transfer Rs.10,000/- in the petitioners account.

10. Copy of this judgment be given dasti to counsels for the parties under signatures of the Court Master. JULY23 2018 dk J.R.MIDHA, J.

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