



2024 :DHC :9968-DB



\$~64

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 20.12.2024

+ **MAT.APP.(F.C.) 435/2024, CM APPL. 75255/2024-Exp**

[REDACTED]

.....Appellant

Through: Mr. Prashant Mendiratta, Mr. Arjun Sharma and Mr. Rahul Bhaskar, Advs

versus

[REDACTED]

.....Respondent

Through: Mr. Sunil Mittal, Sr. Adv. with Ms. Seema Seth, Ms. Muskaan Deswal and Mr. Satish Panchal, Advs

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

REKHA PALLI, J (ORAL)

1. The present appeal under Section 19 of the Family Courts Act, 1984 assails Order dated 18.12.2024 passed by the learned Family Court, Patiala House Courts, New Delhi in HMA No.829/2018. Vide the impugned order, the learned Family Court has not only rejected the appellant's request for deciding her application for maintenance before proceeding with the merits of the pending petition, but has also closed her right to examine herself on account of her inability to appear for cross-examination on 18.12.2024.

2. We may note at the outset that though the appellant had presented herself for cross-examination for the entire day on 16.12.2024 and from 02:00 P.M. to 04:00 P.M. on 17.12.2024, she had failed to appear for cross-



2024 :DHC :9968-DB



examination on 18.12.2024 and a request for postponing the date of 18.12.2024 was made to the learned Family Court on 17.12.2024 itself. The learned Family Court has, however, after observing that this was one of the oldest pending cases, passed the impugned order thereby closing the right of the appellant to examine herself.

3. In support of the appeal, learned counsel for the appellant submits that the Family Court ought to have first decided her application under Section 24 of the Hindu Marriage Act, 1955 (hereinafter 'HMA'). Further, he contends that taking into account that the appellant is doing a private job so as to sustain herself after being deserted by the respondent/ husband, the learned Family Court ought to have appreciated that she could not be granted endless leave. It is only on account of urgent professional commitments that she had made a request before the learned Family Court on 17.12.2024 itself to defer hearing informing the Court that she would not be in a position to appear for cross-examination on 18.12.2024. The learned Family Court however, rejected the said request and proceeded to close her right to examine herself.

4. Issue notice.

5. Ms. Seema Seth accepts notice on behalf of the respondent and the learned senior counsel appearing alongwith her submits that the appellant has been trying to unduly delay the trial and therefore, the approach adopted by the learned Family Court could not be said to be unfair or arbitrary in any manner. Learned senior counsel for the respondent further submits that in any event, the appellant's plea that the application under Section 24 of the HMA ought to have been decided first, is contrary to the settled legal position, for which purpose he relies on the decision of a Division Bench of



2024 :DHC :9968-DB



this Court in *Akash Chadha vs. Preeti Khanna 2016:DHC:5423-DB*.

6. Having considered the submissions of the learned counsel for the parties and perused the record, even though we find no reason to interfere with the decision of the learned Family Court that the application under Section 24 of the HMA will be taken up with the main petition, we are constrained to observe that the right of the appellant to examine herself has been closed arbitrarily. The learned Family Court, in its anxiety to complete the trial in an old matter, has overlooked the fact that in family matters like the present, where the appellant had already been cross-examined at length, a little more sensitivity was required to be shown. In our considered view, in the present factual matrix when it was not a case where the appellant was not appearing for cross-examination, the learned Family Court ought not to have closed the right of the appellant to examine herself in such a hasty manner. The learned Family Court seems to have overlooked the fact that the appellant is admittedly working in a private concern and therefore could not be expected to get leave as and when she applied.

7. In light of the aforesaid, we are constrained to allow the appeal partly by setting aside the impugned order to the extent that it closes the right of the appellant to examine herself by directing that the final arguments in the petition will not be heard till the cross-examination of the appellant is completed, for which purpose the learned Family Court, will be free to fix a date, with the consent of the parties, in January itself. At the same time, the appellant is cautioned to ensure that she appears before the learned Family Court for her cross-examination on the date(s) as may be fixed by the learned Family Court subject to suitability of both sides.

8. At this stage, we may also note that this Court is coming across a



2024 :DHC :9968-DB



number of matrimonial appeals from which it appears that the Family Courts are permitting the cross-examination of both the husband and/ or the wife, as the case may be, to go on endlessly for days altogether, which in our view is not in the interest of justice. We therefore deem it necessary to examine the jurisprudence behind the Family Courts Act, 1984 by referring to the Preamble thereof, which reads as below:

*“An Act to provide for the establishment of Family Courts with a view to promote conciliation in, and **secure speedy settlement of, disputes relating to marriage and family affairs** and for matters connected therewith.”*

(emphasis supplied)

9. Thus, taking into account the very purpose of the Family Courts Act which aims at securing speedy settlement of disputes relating to marriage and family affairs, we are of the view that the learned Family Courts should ensure that the learned counsel for the parties are not permitted to ask irrelevant questions during the course of conducting cross-examination going on for days at a time. The nature of disputes before the Family Courts are generally pertaining to either seeking divorce on the grounds of cruelty, desertion, etc., or seeking custody of the minor children and it is therefore necessary that disputes raised in these petitions are decided expeditiously as envisaged under the Act.

10. Accordingly, while disposing of the appeal in terms of Para 7 hereinabove, we direct the learned Family Courts to ensure that the cross-examinations of the witnesses are completed as expeditiously as possible without causing any undue harassment or embarrassment to the parties. Simultaneously, we also expect co-operation in this regard from all the counsel(s) appearing before the learned Family Courts as unnecessary



2024 :DHC :9968-DB



dragging of cross-examination is against the interest of both sides and the very spirit of the Family Courts.

11. A copy of this Order be forwarded to the Principal Judge, Family Courts for being circulated to all Family Courts in Delhi.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

DECEMBER 20, 2024/Ab