



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

Reserved on: 10.11.2023
Pronounced on: 19.12.2023

+ **CM(M) 941/2023 & CM APPL. 29793/2023**

VASVI GROVER Petitioner
Through: Mr.Tarang Gupta, Mr.Vikrant
Kumar & Mr.Kartikeya
Sharma, Advs.
versus

MANISH GROVER Respondent
Through: Mr.Vinod Malhotra, Mr.Nikhil
Malhotra, Mr.Vansh Sharma,
Mr.Anirudh Gupta & Ms.Neha
Malhotra, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. This petition has been filed by the petitioner, who is the respondent in the Divorce Petition filed by the respondent herein, being HMA No.467/2018, titled as *Manish Grover v. Vasvi Grover* (hereinafter referred to as 'Divorce Petition'), challenging the Orders dated 05.01.2023 and 27.03.2023 [hereinafter after referred to as the 'Impugned Order(s)'] passed in the above-mentioned Divorce Petition by the learned Principal Judge, Family Courts, Patiala House Courts, New Delhi (hereinafter referred to as the 'Family Court').

2. By the Impugned Order dated 05.01.2023, the learned Family Court has been pleased to close the right of the petitioner herein, to conduct further cross-examination of the respondent herein. By the



subsequent Impugned Order dated 27.03.2023, the learned Family Court has, upon recording the Examination-in-Chief of the PW-2 Sh.Praveen Kumar Grover, PW-3 Sh.Manish Kapoor, and PW-4 Sh.Rohit Juneja, has discharged them and listed the Divorce Petition for recording the evidence of the petitioner herein on 31.05.2023.

SUBMISSION OF THE LEARNED COUNSEL FOR THE PETITIONER

3. The learned counsel for the petitioner submits that the learned Family Court has erred in attributing the entire blame for non-completion of the cross-examination of the respondent herein, on the petitioner. Drawing reference of this Court on various orders passed by the learned Family Court between 2018 and 2023, leading upto passing of the Impugned Orders, the learned counsel for the petitioner submits that the recording of the cross-examination of the respondent was delayed for various reasons, and while the petitioner can be said to be guilty of the same on a few dates, the reasons for such delay were beyond the control of the petitioner. He submits that therefore, the learned Family Court has erred in closing the right of the petitioner to cross-examine the respondent, putting the entire blame of the delay only on the shoulders of the petitioner herein.

4. The learned counsel for the petitioner further submits that the learned Family Court has also acted in haste in closing the right of the petitioner to cross-examine PW2, PW3 and PW4, who were produced as witnesses by the respondent for the first time on 27.03.2023. He submits that the petitioner was unable to appear before the learned Family Court on the said date as, when she had earlier appeared in



person on 05.01.2023, she had failed to note down the said next date of proceedings fixed by the learned Family Court. He submits that in any case, the learned Family Court could not have acted in haste and denied an important right to the petitioner to cross-examine the said witnesses.

5. He further submits that after the hearing on 05.01.2023, the respondent had extended a settlement proposal to the petitioner, which was being considered by the petitioner.

6. He submits that between January, 2023 and March, 2023, the Final Examination of the daughters of the parties was also going on, because of which the petitioner could not keep track of the litigation between the parties and engage a new lawyer to represent her in the Divorce Petition. He submits that it is only on 03.05.2023, when a petition filed by the respondent herein, being CM(M) 737/2023, titled as ***Manish Grover v. Vasvi Grover***, was listed before this Court, and the learned counsel for the respondent informed the Court that the right of the petitioner to cross-examine the witnesses had been closed by the learned Family Court, that the petitioner became aware of the passing of the above mentioned Impugned Orders. He submits that unfortunately, the father of the petitioner suffered a massive heart attack on 08.05.2023, because of which he was admitted in Cardiac Care Unit (in short, 'CCU') from 08.05.2023 to 10.05.2023 and continued to remain under treatment. Due to the medical condition of her father, the petitioner could not properly pursue the Divorce Petition and her remedies against the Impugned Orders. He submits



that, therefore, there was some delay in filing of the present petition as well, which was eventually filed somewhere around 27.05.2023.

7. He submits that the petitioner should not be denied an opportunity to cross-examine the respondent and other witnesses produced by the respondent, as the petitioner would be gravely prejudiced by the same in defending the Divorce Petition filed by the respondent. He submits that in matters arising out of matrimonial relations, the courts should adopt a liberal approach and ensure that the party to such dispute is granted a reasonable opportunity to defend the litigation initiated by the other party.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENT

8. On the other hand, the learned counsel for the respondent submits that the learned Family Court has granted more than adequate opportunities to the petitioner to cross-examine the respondent. He submits that the petitioner is merely trying to delay the adjudication of the Divorce Petition by adopting delaying tactics and seeking repeated adjournments before the learned Family Court. He submits that it is only when the learned Family Court realised the above mischief of the petitioner, that the learned Family Court was forced to pass the Impugned Orders dated 05.01.2023 and 27.03.2023, closing the right of the petitioner to cross-examine the respondent and his witnesses.

9. He further submits that on 05.01.2023, the petitioner took a false plea to seek adjournment before the learned Family Court. He submits that the counsel, who has now been appointed by the petitioner, was, in fact, appearing for the petitioner in various other



litigations that are pending between the parties and other family members of the respondent.

10. He submits that the petitioner was appearing in person before the learned Family Court on 05.01.2023, and was in full know of the order passed by the learned Family Court, closing her right to cross-examine the respondent. In spite of the same, she took no remedial action and, in fact, did not appear before the learned Family Court on the subsequent date, that is, 27.03.2023, compelling the learned Family Court to close her right to cross-examine the other witnesses of the respondent. He submits that the petitioner is a highly educated lady and she cannot plead ignorance to the orders passed by the learned Family Court in her presence. He submits that the assertion of the petitioner that she did not note down the next date of hearing in the Divorce Petition is false and cannot be accepted.

11. He submits that the assertion of the petitioner that she was busy due to the examination of the daughters of the parties is also false as, even as per the Date-Sheet of the examination of the children produced by the petitioner before this Court, the last examination took place on 10.03.2023, whereafter she had gone to Mata Vaishno Devi Temple from 25.03.2023 to 27.03.2023. She has also been attending her employment during this period.

12. He submits that even the excuse of ill-health of the father of the petitioner is false inasmuch as the petitioner was busy shopping in that period and had gone on an excursion tour to Goa in the month of May, 2023.



13. The learned counsel for the respondent further submits that the petitioner is also guilty of making a false plea and misleading this Court to obtain an *interim* order from this Court on an earlier occasion and delaying the adjudication of the Divorce Petition filed by the respondent. He submits that she had earlier challenged the order of the learned Family Court by way of a petition, being CM(M) 506/2019, titled as *Vasvi Grover v. Manish Grover*, before this Court whereby she was directed to pay only Rs.15,000/- as the fee of the learned Local Commissioner appointed by the Family Court for recording the evidence of the parties in the Divorce Petition. She falsely alleged that the Court had fixed the fee of Rs.15,000/- ‘per hearing’ and on the basis of such false submission, she obtained an *interim* order dated 29.03.2019 from this Court, staying the further recording of the evidence. The respondent pointed out the above mis-statement given to this Court, however, this Court, by its order dated 03.12.2019, took a lenient view and, in fact, stated that the above assertion of the petitioner may have been wrongly recorded by this Court. Clearly, the petitioner is in a habit of making false statements before this Court and invoking sympathy of this Court, in order to further delay the adjudication of the Divorce Petition.

ANALYSIS AND FINDINGS

14. I have considered the submissions made by the learned counsels for the parties.

15. The Impugned Order dated 05.01.2023 of the learned Family Court records that the Divorce Petition has been pending at the stage



of the respondent's cross-examination since the year 2018, and a substantial part of the cross-examination has already been conducted. The learned Family Court, therefore, refused the request of the petitioner for an adjournment to engage a new counsel. The learned Family Court observed that in case the petitioner wanted to engage a new counsel, she should have done so in advance.

16. While no fault can be found in the observation of the learned Family Court that in case the petitioner wanted to engage a new counsel she should have done so prior to the date of hearing and that she should not have been so casual in defending the proceedings pending before the learned Family Court, however, the said observation is preceded by the observation that the cross-examination of the respondent has been pending since 2018, thereby giving an impression that it is the petitioner who has caused this delay.

17. The learned counsels for the parties have taken me through various orders and the proceedings of the learned Family Court in the above referred Divorce Petition, that transpired between 2018 leading upto the Impugned Order dated 05.01.2023. I shall briefly refer to the same, as in my opinion, the entire blame of the delay cannot be put on the shoulders of the petitioner alone and, therefore, the petitioner alone could not have been made to suffer the consequences of this delay by denying her request for adjournment.

18. The learned Family Court, by its order dated 05.05.2018, on an application filed by the respondent herein, appointed a Local Commissioner to record the evidence of the respondent herein, while directing that the fee of the learned Local Commissioner shall be



borne by the respondent herein. The petitioner herein filed an application seeking review of the said order, however, the learned Family Court, vide order dated 10.08.2018, dismissed the same with costs of Rs.5,000/-.

19. In the proceedings before the learned Local Commissioner, on 04.09.2018, the petitioner took a plea that the respondent has not filed the list of witnesses or the Evidence by way of Affidavit of other witnesses that the respondent proposes to produce, and in the absence thereof, the petitioner cannot proceed with the cross-examination. On the submission of the respondent that he shall be filing the list of witnesses and the affidavits of evidence of other witnesses within two weeks, the respondent was partially cross-examined on the said date.

20. The respondent failed to file the affidavits of evidence of the other witnesses, however, was further cross-examined by the petitioner on 04.10.2018.

21. As the learned Local Commissioner, due to his own family and other commitments, was unable to give a date prior to 30.10.2018 for recording further evidence, at the request of the learned counsel for the respondent, the learned Local Commissioner placed the matter before the Court as the learned counsel for the respondent submitted that he would rather have a change of the learned Local Commissioner.

22. Between 26.10.2018 and 06.12.2018, the learned Family Court made efforts for reconciliation between the parties, however, same failed. The Divorce Petition was, therefore, listed on 19/20/21st, February, 2019 for recording the respondent's evidence.



23. On 19.02.2019, the respondent finally filed the affidavits of evidence of PW2, PW3 and PW4 mentioned hereinabove, however, the petitioner was not present. Consequently, the recording of the cross-examination was deferred to 20.02.2019, subject to payment of costs of Rs.2,000/-.

24. The respondent was partly cross-examined on 20.02.2019, and further cross-examination was deferred to 21.02.2019 at the request of the learned counsel for the petitioner. However, on 21.02.2019, the learned Family Court could not record further cross-examination of the respondent due to paucity of time and therefore, the case was listed for further proceedings on 08.03.2019.

25. On 08.03.2019, the learned Family Court was pleased to appoint a new Local Commissioner to record the evidence of the parties, directing that the initial amount of the fee of the learned Local Commissioner shall be borne by the respondent. However, on 18.03.2019, the file was again taken up as the respondent filed an application seeking that both the parties be made to pay the fees of the learned Local Commissioner appointed by the learned Family Court. The respondent also prayed for change of the learned Local Commissioner appointed by the learned Family Court.

26. The learned Family Court, vide its order dated 18.03.2019, while substituting the Local Commissioner, directed that, out of the total fees of the learned Local Commissioner, that is, Rs.75,000/-, 80% of the fees of the learned Local Commissioner shall be borne by the respondent herein, while 20% of the fees will be borne by the petitioner herein.



27. As the petitioner was not ready to bear the burden of the fees of the learned Local Commissioner, the petitioner challenged the said order before this Court by way of a petition under Article 227 of the Constitution of India, being CM(M) 506/2019, titled as ***Vasvi Grover v. Manish Grover***.

28. This Court, by its order dated 29.03.2019, recording the submission of the learned counsel for the petitioner herein that she would be unable to meet the expenses towards the learned Local Commissioner's fees, stayed the recording of the evidence before the learned Local Commissioner.

29. On 03.12.2019, when the above petition was listed before this Court, a statement of the learned counsel for the respondent herein was recorded that, in fact, the respondent never prayed for appointment of a Local Commissioner and prays that the evidence be recorded by the learned Family Court itself. On the above statement, it was held that the order dated 18.03.2019 of the learned Family Court would, therefore, become infructuous and was accordingly set aside.

30. I must herein itself also advert to the submission made by the learned counsel for the respondent that in those proceedings, the petitioner had misguided the Court by submitting that the fees of the learned Local Commissioner was Rs.15,000/- '*per sitting*' whereas it was Rs.15,000/- in '*lump-sum*'.

31. This Court, in its order dated 03.12.2019, has also considered this submission and found it to be of no consequence, by observing as under:



“4. On the other hand, the learned counsel for the respondent submits that in the order dated 29.03.2019, the petitioner has misguided this Court by contending that the petitioner has been directed to pay a cost of Rs. 15,000/- ‘per sitting’ of the Local Commissioner. Drawing reference to the Impugned Order, he submits that Rs. 15,000/- was a lump sum fee payable to the Local Commissioner and was not ‘per sitting’.

5. I have considered the submissions made by the learned counsels for the parties. As far as the objection of the counsel for the respondent is concerned, I have enquired from the counsel for the respondent if the petitioner claims in the petition as well that the fee of the Local Commissioner was Rs. 15,000/- ‘per sitting’. He is unable to show any such averment in the petition.

6. Clearly there is a bona fide mistake made by Court in the order of 29.03.2019. This, however, cannot disentitle the petitioner to maintain the present petition.

7. In any case, the question of the fee being determined as ‘per sitting’ or ‘lump sum’ is of no relevance. The question before this Court was whether the petitioner could be burdened with the cost of the Local Commissioner when the petitioner is getting maintenance for the children in terms of the order passed by this Court; the Local Commissioner was being appointed at the behest of the respondent; and the petitioner had opposed any direction to make payment to the Local Commissioner being appointed.”

32. I, therefore, do not deem it necessary to re-visit the above issue in the present petition.



33. Pursuant to the order dated 03.12.2019 of this Court, the Divorce Petition filed by the respondent was listed before the learned Family Court on 12.12.2019, when the learned Family Court listed the same for recording of the evidence of the respondent for 17th and 18th March, 2020.

34. Unfortunately, due to the Covid-19 Pandemic and restricted functioning of the Courts, the matter could not be taken up by the learned Family Court between 17.03.2020 and 07.09.2021, thereby causing a loss of almost one year and six months. The same by the Impugned Order dated 05.01.2023, has been attributed by the learned Family Court to the petitioner herein.

35. On 08.09.2021, when the Divorce Petition was again listed before the learned Family Court on resuming the functioning of the Courts, though in a restricted manner, the respondent did not appear and a last opportunity was granted to the respondent to appear for recording the cross-examination. The Divorce Petition was adjourned to 07.01.2022. The learned counsel for the respondent submits that the said order is incorrect inasmuch as, since the proceedings before the learned Family Court were held through video conferencing, the evidence could not have been recorded any of which way. This submission, however, is not relevant for the reason that on 08.09.2021, the Divorce Petition was not adjourned at the request of the petitioner.

36. On 07.01.2022, again the Divorce Petition was taken up through video conferencing and was adjourned to 11.04.2022, for recording of



the further cross-examination of the respondent and the entire evidence of the respondent.

37. On 11.04.2022, the cross-examination of the respondent could not be recorded as he did not appear as he was unwell. The Divorce Petition was, therefore, adjourned to 21.05.2022 and 24.05.2022 for recording further cross-examination of the respondent.

38. On 21.05.2022, the petitioner requested for an adjournment, stating that her counsel had just recovered from Covid-19 infection and in support of such request, had also produced the Lab Report. The Divorce Petition was, therefore, adjourned to 14.07.2022 and 15.07.2022, for recording the respondent's evidence.

39. On 14.07.2022, the petitioner filed an application seeking adjournment/change of dates for cross-examination of the respondent. The said request was rejected by the learned Family Court and the petitioner was directed to cross-examine the respondent on 15.07.2022, the date already fixed.

40. On 15.07.2022, the respondent was further cross-examined by the petitioner, and the Divorce Petition, at the request of the learned counsel for the petitioner, was adjourned to 28.07.2022, 05.08.2022, and 06.08.2022 for recording further cross-examination.

41. While the respondent was further cross-examined on 28.07.2022, the respondent could not be cross-examined on 05.08.2022, as it was submitted that the learned counsel for the petitioner had suffered from Covid-19. The Divorce Petition was therefore, adjourned to 14.09.2022 for recording of further cross-examination of the respondent.



42. On 14.09.2022, the respondent did not appear, and the Divorce Petition was adjourned to 16.09.2022, the date earlier fixed.

43. On 16.09.2022, the respondent was again partially cross-examined, and further cross-examination was deferred to 07.10.2022.

44. On 07.10.2022, the respondent could not be cross-examined as the learned Presiding Officer of the Family Court was on leave, and the Divorce Petition was adjourned to 05.01.2023.

45. From a perusal of the above orders, it is apparent that the petitioner can be accused of taking adjournments and not cross-examining the respondent for only on a few dates; the major reason for delay was the restricted functioning of the Court due to Covid-19 Pandemic, and on a few occasions, due to non-appearance of the respondent himself, while on some occasions, due to the *interim* orders passed by this Court in the controversy relating to the appointment of the learned Local Commissioner, also the vacillating stand of the respondent on the Local Commissioner, as is captured hereinabove. However, the learned Family Court, without appreciating the above, and with just one stroke of pen, has attributed the entire blame of delay for the period 2018 onwards in recording of the cross-examination of the respondent on the petitioner. The same cannot be accepted and reflects an error apparent on the record of the learned Family Court.

46. This error has also made the learned Family Court deny a valuable right to the petitioner herein to cross-examine the respondent in a matrimonial nature of the dispute. The same cannot be accepted. It was open for the learned Family Court to take an alternative



approach and put conditions on the petitioner, rather than closing her valuable right. Keeping in view the fact that this is a matrimonial dispute, the learned Family Court should be more lenient than it would be had it been a commercial dispute between the parties. A matrimonial dispute involves relationships and, therefore, requires a little more sensitivity by the learned Family Court. While there can be no doubt that if the learned Family Court finds that one of the parties is taking undue advantage of the liberal approach of the learned Family Court in such matters, the Court would pass appropriate orders so as to deny any indulgence to any such party and ensure that the proceedings before it culminate into a just and proper adjudication, expeditiously, at the same time, rules of procedure cannot be stringently applied to such proceedings. The learned Family Court has to therefore, bring about a delicate balance between the need for expeditious disposal and giving a fair opportunity to the party to present the case.

47. As far as the non-appearance of the petitioner on 27.03.2023 before the learned Family Court is concerned, the learned counsel for the petitioner submits that, as the petitioner had appeared in-person before the learned Family Court on 05.01.2023, she could not properly note down the next date of hearing given by the learned Family Court, and for this reason, could not appear before the learned Family Court on 27.03.2023. He further submits that the children of the parties were having their examinations during the intervening period, because of which the petitioner could not engage a new counsel, and lost track of the Divorce Petition. In support of this, the petitioner has filed the



‘Date-Sheet’ of the Pre-Board Examination and the Final Examination of the daughters.

48. Though the learned counsel for the respondent has submitted that the petitioner went on a vacation to Mata Vaishno Devi Temple and later, to Goa in the month of March, 2023, this would be post the examination of the children.

49. This Court cannot be oblivious of the pressure that the parents also feel when their children have to give Board Examinations. The plea of the petitioner that due to the Board Examinations of her daughters, she could not engage a new counsel, therefore, cannot be held to be fanciful or something which is unworthy of any credence. The same appears to be genuine to this Court.

50. The learned Family Court, carrying forward the legacy of the order dated 05.01.2023, on 27.03.2023, closed the right of the petitioner herein to cross-examine the three witnesses, that is, PW2, PW3 and PW4 mentioned hereinabove, who had appeared before the Court for the first time, thereby again defeating the valuable right of the petitioner. The learned Family Court could have granted at least one opportunity to the petitioner to cross-examine them. The learned Family Court could also have explored the option of putting conditions on the petitioner, including costs for the adjournment and for the inconvenience of these witnesses which they would have suffered as they will have to appear before the learned Family Court again. However, as noted hereinabove, and as is apparent from the record, the learned Family Court carried the legacy of the order dated



05.01.2023, and did not even explore these options before closing the valuable right of the petitioner to cross-examine these witnesses.

51. At this stage, I would note the submission of the learned counsel for the respondent that the petitioner engaged a counsel who was earlier also appearing for the petitioner in the Divorce Petition and also other litigations that are pending between the parties including and the other family members of the respondent. This has been explained by the learned counsel for the petitioner, submitting that he was earlier appearing as an associate/junior counsel of the earlier counsel of the petitioner, and was later requested by the petitioner to appear in his own individual capacity as she could not afford the legal fee of the earlier counsel.

52. In my view, this controversy should not detain me further as this Court cannot dictate to the petitioner as to which counsel she would like to engage or even draw an adverse inference only for the counsel engaged by her. It is not uncommon for the cases to be passed on to the junior counsels from their senior counsel where such counsel had been working. In fact, many senior counsels encourage their associate counsels in this manner. This is a laudable practice of the legal profession.

53. As far as the delay in filing of the present petition is concerned, at best, it would be a period of two months between March, 2023 and May, 2023, which is not so substantial as would disentitle the petitioner to grant of a relief from this Court. Though not much relevant, the petitioner has also stated that though she came to know of



the passing of the Impugned Orders on 03.05.2023, due to ill-health of her father, she could not take immediate steps against the same.

CONCLUSION AND DIRECTIONS

54. For the reasons stated hereinabove, I find that the petitioner has been able to make out a sufficient cause for not cross-examining the respondent herein on 05.01.2023, and for not appearing before the learned Family Court on 27.03.2023. The Impugned Order dated 05.01.2023 and 27.03.2023 passed by the learned Family Court are accordingly set aside.

55. At the same time, it cannot be denied that due to the acts of the petitioner, a substantial delay will be caused in the adjudication of the Divorce Petition as the clock will have to be set back. There would also be inconvenience caused to the respondent and PW2, PW3, and PW4. The petitioner must, therefore, pay costs of Rs. 10,000/- to the respondent. The present order shall take effect subject to the payment of the costs of Rs. 10,000/- by the petitioner to the respondent within a period of four weeks from today.

56. The Divorce Petition shall now be taken up from the stage of recording of further cross-examination of the respondent, whereafter the cross-examination of the other witnesses produced by the respondent shall also be recorded, and an opportunity in this regard shall be granted to the petitioner.

57. Keeping in view the order dated 08.08.2023 passed by this Court in CM(M) 737/2023, titled as *Manish Grover v. Vasvi Grover*, the petitioner is warned that henceforth, the learned Family Court shall



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not grant any unwarranted adjournments to either of the parties, and the petitioner would not be entitled to any further indulgence of the learned Family Court and of this Court.

58. The petition is allowed in the above terms. Pending application is also disposed of.

NAVIN CHAWLA, J.

DECEMBER 19, 2023/Arya/SS

Click here to check corrigendum, if any