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

Date of decision: 06.11.2026

\# **CNR No. DLHC010543822026**

\+ CM(M) 2457/2026 & CM APPL. 78276/2026 (Stay)

PURNIMA@ NEHA .....Petitioner

Through: Mr. Amit Singh, Advocate through Video Conferencing.

versus

GAGAN KUMAR .....Respondent

Through: *Nemo.*

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

% **JUDGEMENT (Oral)**

1. The present Petition has been filed under Article 227 of the Constitution of India, 1950, assailing the Order dated 01.10.2026 [“**Impugned Order”]** passed by the learned Principal Judge, Family Court (West), Tis Hazari Courts, Delhi [“**learned Family Court”]**, in HMA No. 1929/2022, titled *“Gagan Kumar vs. Purnima @ Neha”*.

2. Learned counsel appearing on behalf of the Petitioner would confine his submissions to challenging the Impugned Order on the ground that the learned Family Court has erroneously rejected the application seeking recall of the Order dated 10.09.2024, whereby the Petitioner was proceeded against *ex parte*. He would submit that the service purportedly effected upon the mother of the Petitioner could not be construed as valid service upon the Petitioner herself. He would

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Signing Date:07.11.2026 16:13:58

further contend that the subsequent affixation of summons, in the facts and circumstances of the case, was also insufficient to constitute valid service. Accordingly, it is contended that the Petitioner ought to be afforded an opportunity to participate in the proceedings before the learned Family Court, file her written statement and contest the matter on merits.

3. It is apposite to note that no further grounds were urged by the learned counsel appearing on behalf of the Petitioner, and it is on this limited argument that this Court would proceed to adjudicate the present *lis*.

ANALYSIS AND CONCLUSION

4. This Court has heard the learned counsel appearing on behalf of the Petitioner and, with his able assistance, gone through the contents of the Impugned Judgment. The relevant paragraphs of the Impugned Judgment, which in detail set out the reasoning as to why the application came to be rejected, are as follows:-

> "4. In this case, directions were given on various dates for issuance of summons by speed post and ordinary process. There are three returned speed post envelopes on record by which the summons were sent to the respondent. The postal article for 12.10.2023 was returned unserved with the report of "unclaimed", postal article for 09.01.2024 was returned without clear reason for the return and the postal article for 06.03.2024 was returned with the report of "incomplete address".
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> 5. The summons sent for service through the District Court Ghaziabad for 06.03.2024 was returned with the report of the process server Mr Raj Bahadur Singh that the respondent met him and refused to accept the summon. Thereafter, he affixed the summon on the main gate in the south corner. The report is not accompanied by an affidavit but as per the practice it is verified by the process server on oath. This report was perused by my Ld. Predecessor and he directed that the respondent be served through the reader of the court concerned at Ghaziabad for the next date i.e. 18.04.2024.
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> 6. For 18.04.2024 the process was not returned and consequently fresh summons were issued for 11.07.2024. This time the process

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Signing Date:07.11.2026
16:13:58

server at Ghaziabad Mr Atul Kumar visited the address of the respondent on 05.07.2024. Mother of the respondent told the process server that the respondent had gone out and she did not know when she would return. The mother of the respondent refused to accept the summon and thereafter the process server affixed the summon. The report is verified by the process server on oath.

7. Vide order dated 11.03.2024, the respondent was treated as served. The petitioner was directed to pay 11,000 as litigation expenses to the respondent on or before 12.08.2024. Direction was also given that the parties shall appear before the Principal Counsellor on 12.08.2024 to explore the possibility of settlement. It was also mentioned that in case there was no settlement, the respondent would file the WS within one month with copy to the Ld. Counsel for the petitioner and the petitioner could file the replication within one month thereafter. The matter was adjourned for 10.09.2024.

8. On 10.09.2024, the report of the Principal Counsellor was received that the respondent did not appear for the counselling and therefore the matter could not be settled. After waiting til2 ١ pm, the respondent was proceeded against ex-parte. The petitioner filed his evidence affidavit as PW-1 on 12.11.2024 and he examined PW-2, 3 & 4 on 21.11.2025. Thereafter, the matter was adjourned for 20.12.2025 for ex-parte Final Arguments. The matter was pending at the same stage when firstly the application U/O 9 rule 13 and thereafter the application U/O 9 rule 7 CPC was moved.

9. The respondent contends that the address is correct but the sunmons were never served upon her. It is stated that the refusal by her mother cannot be treated a valid service as she was not served personally and no substituted service was validly effected. She also contends that without ensuring valid service and compliance of the previous orders, the Court proceeded against ex parte. She claims that just before the previous date, the counsel for the petitioner at Ghaziabad informed her about the present proceedings. Thereafter, she immediately engaged Ld. Counsel and Ld. Counsel filed the Vakalatnama. But the Vakalatnama was not taken on recore she had already been proceeded against ex-parte.

10. No reply has been filed by the petitioner. I have considered the arguments of Ld. Counsel for the parties and I have perused the record.

11. The respondent has not claimed that the process server did not visit her address on 05.07.2024 and that he did not meet her mother. She has only stated that there was no personal service and no valid substituted service. The report of the process server is mentioned above in detail. The affixation of the summon was in accordance with Order 5 rule 15 &17 CPC.

12. The respondent is also conspicuously silent about the report for 06.03.2024 which states the process server met her and on her

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BHATIA
Signing Date:07.11.2026
16:13:58

refusal to accept the summon, he affixed it on the main gate of the house. This was also a valid service under Order 5 rule 17 CPC. There is no substance in the contention of the respondent that she was not validly served.

13. Despite the service by affixation for 06.03.2024, my Ld. Predecessor was pleased to direct that the respondent be served through the reader of the Court concerned at Ghaziabad but the process for the next date i.e. 18.04.2024 was not returned. Vide order dated 18.04.2024, my Ld. Predecessor gave direction for issuance of fresh summon for 11.07.2024. But this time the direction was for service through the Ld. District Judge, Ghaziabad. The summons was served and the report was received as mentioned My Ld. Predecessor accepted the report. Therefore it cannot be said that the service for 11.07.2024 was not valid as there was an earlier direction for service through the reader of the Court concerned at Ghaziabad.

14. The respondent has not raised the issue of non-payment of the litigation expenses by the petitioner which he was supposed to pay before 12.08.2024. It is not her case that the petitioner was informed about the bank account in which he could have transferred the amount. It is also not her case that she could not appear in this matter due to financial difficulty which could have been addressed by the payment of the litigation expenses. She was served but she chose not to appear and also did not attend the counselling on 12.03.2024.

15. The record of the case shows that the respondent was validly served for 06.03.2024 and also for 11.07.2024. The application U/O 9 rule 7 had to be moved by the next date after 11.07.2024 Le 10.09.2024 but the application U/O 9 rule 13 CPC which could have been treated as an application U/O 9 rule 7 CPC was filed as late as 20.12.2025.

16. Expressing anguish over procrastination and delays in the matrimonial matters, Hon'ble Supreme Court made some observations in the matter reported as Bhuwan Mohan Singh v Meena and ors. (2015) 6 SCC353. The matter originated out of proceedings under Sec 125 CrPC but in para 13 of the judgment general observations were made regarding the need to curb delays in a matrimonial matters. It would be apposite to reproduce the relevant portion of the judgement reads as under:

> "13. The purpose of highlighting this aspect is that in the case at hand the proceedings before the Family Court was conducted without being alive to the Objects and Reasons of the Act and the spirit of the provisions under Section 125 of the Code. It is unfortunate that the case continued for nine years before the Family Court. It has come to the notice of the Court that on certain occasions the Family Courts have been granting adjournments in a routine manner as a consequence of which both the parties suffer

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> or, on certain occasions, the wife becomes the worst victim. When such a situation occurs, the purpose of the law gets totally atrophied. The Family Judge is expected to be sensitive to the issues, for he is dealing with extremely delicate and sensitive issues pertaining to the marriage and issues ancillary thereto. When we say this, we do not mean that the Family Courts should show undue haste or impatience, but there is a distinction between impatience and to be wisely anxious and conscious about dealing with a situation. A Family Court Judge should remember that the procrastination is the greatest assassin of the lis before it. It not only gives rise to more family problems but also gradually builds unthinkable and Everestine bitterness. It leads to the cold refrigeration of the hidden feelings, if still left. The delineation of the lis by the Family Judge must reveal the awareness and balance. Dilatory tactics by any of due parties has to be sternly dealt with, for the Family Court Judge has to be alive to the fact that the lis before him pertains to emotional fragmentation and delay can feed it to grow. We hope and trust that the Family Court Judges shall remain alert to this and decide the matters as expeditiously as possible keeping in view the Objects and Reasons of the Act and the scheme of various provisions pertaining to grant of maintenance, divorce, custody of child, property disputes, etc." (Emphasis supplied)
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> 17. This court has held that the respondent did not appear in this matter despite valid service and that there is no merit in her application. No leniency can be shown on the ground that it is a matrimonial matter and that the respondent would suffer if she is not allowed to contest the matter. Dilatory tactics are not to be encouraged as held by Hon'ble Supreme Court."
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> ***(emphasis supplied)***

5. This Court has considered the submissions advanced by learned counsel appearing on behalf of the Petitioner and has carefully perused the reasoning assigned by the learned Family Court in the Impugned Order. At the outset, it is pertinent to observe that the very grounds which are sought to be urged before this Court in challenge to the Impugned Order have been specifically raised before and duly considered by the learned Family Court. The learned Family Court has examined the objections pertaining to the alleged invalidity of service

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BHATIA
Signing Date:07.11.2026
16:13:58

upon the Petitioner through her mother, the subsequent affixation of summons at the address furnished for service, as well as the contention that the Petitioner was never personally served with the summons. These aspects have not been brushed aside or dealt with cursorily; rather, the learned Family Court has examined the reports of the process servers, the sequence of orders passed in the proceedings and the conduct of the Petitioner, before arriving at the conclusion that the service effected upon her was valid.

6. A perusal of the Impugned Order would reveal that the learned Family Court has taken note of the process server's report dated 06.03.2024, wherein it was specifically recorded that the Petitioner had refused to accept the summons and that the same was thereafter affixed at the main gate of the premises. The learned Family Court has further noticed that the Petitioner has not disputed the visit of the process server to her address on 05.07.2024 or the fact that he had met her mother, who declined to accept the summons on the Petitioner's behalf, following which the summons were affixed. Upon consideration of these circumstances, the learned Family Court has returned a finding that the procedure contemplated under Order V Rules 15 and 17 of the CPC stood duly complied with. The learned Family Court has also taken note of the subsequent steps undertaken for service through the District Judge, Ghaziabad, and the fact that the report received pursuant thereto was accepted by the Court. Thus, the finding regarding valid service is not founded upon an isolated circumstance but emerges from a consideration of the entire sequence of events and the material available on the record.

7. This Court further finds that the learned Family Court has not confined its consideration merely to the question of service but has

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Signing Date:07.11.2026
16:13:58

also examined the conduct of the Petitioner and the circumstances in which the application seeking recall of the *ex parte* proceedings came to be instituted. It has specifically noticed that despite the service having been treated as valid, the Petitioner did not enter appearance and remained absent when the matter was taken up for counselling. The learned Family Court has also taken note of the fact that the proceedings had progressed substantially in the *interregnum*, with the Petitioner having been proceeded against *ex parte* on 10.09.2024, followed by the recording of the Petitioner's evidence and examination of the other witnesses. It was only thereafter, on 20.12.2025, that the application seeking recall came to be instituted. These circumstances have been considered by the learned Family Court while examining whether any sufficient ground had been made out for recalling the order proceeding against the Petitioner *ex parte*.

8. In the aforesaid factual backdrop, this Court is unable to discern any infirmity in the approach adopted by the learned Family Court. The submissions advanced on behalf of the Petitioner are, in substance, an attempt to seek a fresh appreciation of the very same material which has already been considered by the learned Family Court. The jurisdiction exercised by this Court under Article 227 of the Constitution of India is supervisory in nature and does not confer upon this Court the jurisdiction of an appellate forum to reassess the evidence or substitute its own conclusions merely because another view may be possible on the same material. Interference would be warranted only where the order under challenge suffers from patent illegality, jurisdictional infirmity, perversity or a manifest failure to exercise jurisdiction in accordance with law. No such infirmity has been demonstrated in the present case.

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16:13:58

9. It is also relevant to note that the learned Family Court has dealt with the contention regarding service in considerable detail and has returned findings upon examining the relevant reports and the procedural history of the proceedings. The mere reiteration of the same objections before this Court, without demonstrating any error apparent in the reasoning adopted by the learned Family Court, cannot furnish a ground for invoking the supervisory jurisdiction under Article 227 of the Constitution. This Court cannot be called upon to undertake a second round of adjudication on the question of service, particularly when the learned Family Court has considered the same and recorded reasons in support of its conclusion. To do so would effectively amount to converting the jurisdiction under Article 227 into one of regular appellate scrutiny, which is impermissible.

10. This Court is also conscious of the fact that the proceedings arise out of matrimonial litigation and that the consequences of an *ex parte* adjudication may have a bearing upon the rights and interests of the parties. However, the nature of the proceedings, by itself, cannot be a ground to disregard the procedural history of the case or to unsettle findings which have been returned by the learned Family Court after due consideration of the material on record. The learned Family Court has also adverted to the observations of the Hon'ble Supreme Court in ***Bhuwan Mohan Singh v. Meena & Ors., (2015) 6 SCC 353***, emphasising the need to ensure expeditious disposal of matrimonial proceedings and to guard against unnecessary procrastination. While such observations cannot dispense with the requirement of ensuring due process, they reinforce the need for proceedings before Family Courts to be conducted with due expedition and without avoidable delays.

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16:13:58

11. In view of the foregoing discussion, this Court finds that the Impugned Order does not suffer from any jurisdictional error, patent illegality or perversity warranting interference in the exercise of supervisory jurisdiction under Article 227 of the Constitution of India. The learned Family Court has considered the grounds urged by the Petitioner, examined the relevant material and assigned reasons for rejecting the application seeking recall of the order proceeding against her *ex parte*. This Court, therefore, finds no merit in the present Petition and is not inclined to interfere with the Impugned Order.

12. Accordingly, the present Petition, along with pending application(s), if any, stands dismissed.

13. The present Petition, along with pending Application(s), if any, stands disposed of in the aforementioned terms.

HARISH VAIDYANATHAN SHANKAR, J

NOVEMBER 6, 2026/nd/va

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