

22#

% 08.12.2010

Present:- Mr.Mir Akhtar Hussain, Advocate for the appellant.
Mr. Kamlesh Kumar, Advocate for the respondent.

+MAT.APP.31/2008 and C.M.No.4885/2008

*

During the course of arguments, Mr.Kamlesh Kumar, learned counsel for the respondent has drawn attention of this Court to the pleas taken by the appellant in the present appeal to plead for setting aside the ex parte judgment and decree dated 14.09.2007 passed by the learned trial court whereby the petition under Section 13 (1) (ia) of the Hindu Marriage Act filed by the respondent herein was allowed. The counsel further point out that one of the main grievance raised by the appellant is that a fraud was played upon the appellant by the respondent in showing the address of the appellant at Jasola Vihar, Delhi, knowing fully well that the appellant was not residing at Jasola Vihar, Delhi but was living at Jammu with her parents. Submission of counsel for the respondent is that without seeking the remedy under Order IX Rule 13 CPC, the appellant has preferred the

Signature Not Verified

Digitally Signed By: AMULYA
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

present appeal so as to challenge the ex- parte judgment and decree dated 14.09.2007 passed by the learned trial court.

On the aforesaid submission of counsel for the respondent, Mr.Mir Akhtar Hussain, learned counsel for the appellant submits that he shall withdraw the present appeal but liberty be given to the appellant to move the learned trial court to seek his remedy of filing an application under Order IX Rule 13 CPC for setting aside the ex parte judgment and decree dated 14.09.2007.

Reserving the said liberty, the appellant is permitted to withdraw the present appeal. The appeal and C.M.No.4885/2008 are accordingly dismissed as withdrawn. Withdrawal of the present appeal, however, will not deprive the appellant to move the necessary maintenance application before the learned trial court in the event of said judgment and decree is set aside by the trial court. The appellant shall also be at liberty to challenge the judgment and decree on merits by filing an appeal, if the learned trial court happens to dismiss the application of the appellant to be moved by her under Order IX Rule 13 CPC.

24

With the aforesaid directions the present appeal is
disposed of.

December 08, 2010

dc



KAILASH GAMBHIR, J