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

+ **CM(M) 1145/2012**

ANJALI CHATTOPADHYAY GOSWAMI

..... Petitioner

Through : Mr. S.K. Bhattacharya, Adv. along with
petitioner in person

versus

UTPAL GOSWAMI

..... Respondent

Through : None

CORAM:

HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J (oral)

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CM 17955/2012 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

CM(M) 1145/2012

1. By way of this petition under Article 227 of the Constitution of India, a challenge has been made to the order dated 8th February, 2012 and 3rd September, 2012. By the order dated 8th February, 2012, the learned Addl. District Judge has allowed the respondent/husband to withdraw H.M.A. case no.105/2006 and by subsequent order dated 3rd September, 2012, the application of the petitioner/wife for recalling of the order dated 8th February, 2012 has been dismissed.

2. A divorce petition was filed by the respondent/husband against the appellant/wife under section 13 of the Hindu Marriage Act which was pending consideration before the learned trial court for some time. The petitioner/wife contested the said petition for sometime. On 7th February, 2012, respondent/husband had moved an application under Order 23 Rule 1 CPC for withdrawal of the said petition on the ground that he would like to file the petition in U.K. court. The said application was allowed on 8th February, 2012 after recording his statement. Thereafter, petitioner/wife moved an application for recalling of the said order on the ground that no notice was served and the application was malafide. Thereafter, vide impugned order dated 3rd September, 2012, the learned trial court had upheld the order of withdrawal of divorce petition. However, the learned trial court had modified the said order to the extent that the maintenance application of the petitioner/wife under section 24 of the HMA and the application for perjury against Mr.D.N.Ray had been separated from the main petition and ordered to be registered as miscellaneous applications.

3. The grievance of the petitioner/wife is that the learned trial court ought not have allowed withdrawal of the divorce petition. Learned counsel for the appellant has contended that it was a conditional withdrawal and there was no intention to abandon the suit, as such, same ought not have been allowed by the learned trial court.

4. I have considered the submissions made. The order by which withdrawal has been allowed is as under:-

“File taken up on application for withdrawal of the petition

filed by the petitioner.

Present: Petitioner in person with counsel Sh.P.Banerjee.
None for respondent.

It is submitted by the petitioner that he wants to withdraw the present petition as he wants to file the same in the appropriate courts in United Kingdom. Let statement of petitioner be recorded.

Statement of petitioner recorded on separate sheet who has been duly identified by his counsel. The present petition is dismissed as withdrawn. File be consigned to record room.

Date of 02.04.2012 stands cancelled.

Announced in open court Sudesh Kumar
On 08.02.2012 Addl District Judge-02(Central)
Tis Hazari Courts/Delhi”

5. The findings of the learned trial court on the application for recalling of the order dated 3.9.2012 is as under:-

“In the order dated 08.02.2012, the petition of the petitioner was simply dismissed as withdrawn and no permission has been granted to the petitioner to file fresh suit on the same cause of action. As such, if the petitioner has been permitted to withdraw the petition, no prejudice has been caused to the respondent/applicant as no permission has been granted to the petitioner to file fresh suit on the same cause of action. The petitioner is the master of his own case. He cannot be compelled to

continue with the proceedings, if he does not want to continue with the proceedings. The petitioner can withdraw his petition at any time.”

6. The learned trial court has rightly observed that respondent/husband cannot be compelled to continue with the proceedings if he intends to withdraw the same. Vide order dated 8th February, 2012, respondent/husband has been permitted to withdraw the divorce petition. No permission has been granted by the learned trial court to him to file a fresh suit on the same cause of action. Respondent/husband cannot be stopped from pursuing other remedies, if any, available to him in accordance with law. The impugned order is not prejudicial to the petitioner/wife in any manner, inasmuch as the court has modified the order dated 8th February, 2012 and the maintenance application u/s 24 of the HMA and another application for perjury against Mr.D.N.Ray which was pending in the divorce petition have been separated from the main file and ordered to be registered as miscellaneous applications.

7. In view of the above, no illegality is seen in the impugned orders which calls for interference on this court under Article 227 of the Constitution of India. Petition stands dismissed.

VEENA BIRBAL, J

OCTOBER 16, 2012

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