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

+ MAT.APP.(F.C.) 6/2013

PRAVEEN MAHTO

..... Appellant

Represented by: Mr. Vijay Chandra Jha, Advocate.

versus

RITA MAHTO

..... Respondent

Represented by: None.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

17.05.2013

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1. Learned counsel for the appellant fairly concedes that in the caption of the divorce petition it was expressly stated the same was under Section 13(1)(ia) of the Hindu Marriage Act, 1955; which pertains to cruelty. It was never indicated in the heading of the petition that the appellant was seeking divorce on ground of desertion under Section 13(1)(ib) of the Hindu Marriage Act, 1955. However, counsel states that in the prayer clause it was expressly stated that the appellant seeks divorce on the ground of cruelty and alternatively on the ground of desertion. Unfortunately, the counsel typed the word 'separation'. Learned counsel states that meaningfully read, the ground prayed for was desertion.

MAT.APP.(F.C.) 6/2013

page 1 of 2

2. Be that as it may, counsel states that this aspect of the matter was never highlighted during argument before the learned Family Court and this is the reason why the impugned decision makes no reference to divorce being sought on the ground of desertion.

3. Faced with the aforesaid, learned counsel states that he may be permitted to withdraw the appeal to enable the appellant to file a proper application before the Family Court pointing out as above.

4. The appeal is accordingly dismissed as not pressed.

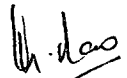
5. Needless to state, if the appellant were to file an application before the learned Judge Family Court pointing out that meaningfully read appellant had sought divorce alternatively on the ground of desertion, the said application would be decided by the learned Judge, Family Court as per law.

6. No costs.

CM No.7929/2013

Dismissed as infructuous.


PRADEEP NANDRAJOG, J.


V. KAMESWAR RAO, J.

MAY 17, 2013

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