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

+ **Date of Decision: 28.09.2015**

% **MAT.APP. 44/2012**

SHS

..... Appellant

Through: Mr. Mohit Monga, Advocate

versus

PUS

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. I have heard counsel for the appellant. The respondent was proceeded ex-parte on 24.01.2014. The application of the appellant under Order 41 Rule 27 CPC to lead additional evidence being CM No.8587/2012 was allowed by this court on 10.09.2014.

2. The appellant has thereafter led further evidence in the matter. She examined herself as AW-1 and tendered her additional affidavit by way of evidence Ex AW-1/A. She produced the original rent receipt bearing no.012 dated 10.06.2009 showing payment of rent of Rs.9,000/- to Mr. Rajender Prakash Kaim, landlord of the premises bearing flat no.009, Navjagriti Apartments, CGHS-II, Vasundhara Enclave, Delhi-110096, in which he

stated that she is the tenant of one room. The rent receipt is Ex. AW-1/1. She also exhibited the fee receipt issued in the name of the appellant's son PS by Ryan International School as AW-1/2. She also exhibited the school identity card of her son issued by Ryan International School as Ex. AW-1/3. She exhibited her mobile bill bearing account no.16155026 issued by Airtel at her address of flat no.009, Navjagriti Apartments, CGHS-II, CGHS, Vasundhara Enclave, Delhi-110096 as Ex. AW-1/4. She also produced the original New Bima Gold Policy from LIC of India as Ex. AW-1/5 and the first premium receipt issued by LIC as Ex. AW-1/6 – both of which had shown her address as that of flat no.009, Navjagriti Apartments, CGHS-II, CGHS, Vasundhara Enclave, Delhi-110096. She also produced the computer generated letter of income tax Pan service unit with reference to her request for change of details and data of PAN Card No.BOPPS5322K as Mark-X. She also produced Sh. Anup Agarwal working as Senior Manager at NSDL, E-governance Infrastructure Ltd. who has exhibited the document Mark-X by stating that the same has been issued from their office. He stated that the application of the appellant requesting for issuance of new Pan card/change /correction of card vide acknowledgment receipt no.0840100751113 dated 14.02.2011 mentions the address of the applicant as flat no.009, Navjagriti Apartments, CGHS-II, Vasundhara Enclave, Delhi-110096. The appellant has also examined Sh. M.T. Paulose, an employee of Ryan International School, Noida. He has also exhibited the fee receipt Ex. AW-1/2. He stated that the same has been issued by Ryan International School, Noida. He has also identified the identity card as the one issued by the school in the name of PS. He stated that AW-1/2 and AW-1/3 shows the address of PS as flat

no.009, Navjagriti Apartments, CGHS-II, Vasundhara Enclave, Delhi-110096.

3. The appellant has produced AW-3 Mr. Atul Kapoor, the Asstt. Administrative Officer of LIC under the branch unit no.11F, B-85, Bhishma Pita Marg, New Delhi. He stated he had brought the record and seen Ex. AW-1/5 and AW-1/6. He stated that they had been issued by the said branch in the name of the appellant with respect to Bima Gold Policy and the address of the policy holder has been mentioned as flat no.009, Navjagriti Apartments, CGHS-II, Vasundhara Enclave, Delhi-110096.

4. The submission of counsel for the appellant is that the aforesaid unimpeachable documentary evidence clearly establishes that at the time of filing of the divorce petition by the appellant, the appellant was residing at flat no.009, Navjagriti Apartments, CGHS-II, Vasundhara Enclave, Delhi-110096, and that she continued to reside in the said address even thereafter. The respondent has not appeared to contest the present petition. He did not even appear to cross examine the witness produced by the appellant while leading additional evidence. The testimony of the said witnesses has gone un rebutted.

5. It appears from the rent receipt Ex. AW-1/1 dated 10.06.2009 for the period 10.06.2009 to 09.07.2009, and the school fee receipt AW-1/2 for the period July-September 2009 issued by Ryan International School, that the appellant was residing at the aforesaid address, i.e. flat no.009, Navjagriti Apartments, CGHS-II, Vasundhara Enclave, Delhi-110096, as the said address finds mention in the rent receipt, as well as the school fee receipt. Ex. AW-1/4, the bill raised by Airtel pertains to August-September 2011,

and the same may not be relevant to establish the residence of the appellant in the year 2009. However, it shows the continued occupation of the appellant of the said flat, as even this bill mentions the address of the appellant at flat no.009, Navjagriti Apartments, CGHS-II, Vasundhara Enclave, Delhi-110096. Ex. AW-1/3, the identity card issued in the name of PS for the year 2009-2010 also mentions the same address as claimed by the appellant. The LIC policy and receipt Ex AW-1/5 and AW-1/6 shows the same address as claimed by the appellant. However, they pertain to the year 2010 and, therefore, only establish the continued occupation of the said premises by the appellant.

6. Considering the evidence led by the appellant through herself and the other witnesses produced by her, it stands reasonably well established that the appellant was residing at the aforesaid address in the year 2009. The divorce petition was instituted on 18.07.2009. The appellant was residing at the aforesaid address given by her, prior to the said date. Therefore, the finding returned by the Trial Court that the appellant had not been able to establish her residence, as claimed by her, cannot be sustained in the light of additional evidence led by the appellant. The said finding is, accordingly, set aside.

7. The learned ADJ dismissed the divorce petition on the ground of territorial jurisdiction alone. A perusal of para 27 of the impugned judgment dated 31.01.2012 passed in HMA No.393/2009 shows that the learned ADJ did not examine the petition of the appellant on merits. Accordingly, the impugned judgment is set aside and the matter is remanded back to the concerned court for adjudication on merits. Before fixing the date for

hearing of the petition, the concerned court shall issue notice to the respondent. The matter shall be listed for arguments, since the evidence already stand led by the appellant/petitioner and the respondent was proceeded ex-parte and, therefore, did not lead any evidence.

8. The appeal stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

SEPTEMBER 28, 2015

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