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

+ **MAT.APP.(F.C.) 42/2013**

MR SHANTANU SINGH

..... Appellant

Through: Mr.Sudeep Singh, Advocate with the
appellant in person.

versus

MS SWATI SINGH

..... Respondent

Through: Mr.Brij Bhushan Solanki, Advocate.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

23.04.2015

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On the last date of hearing of the present appeal, counsel for the parties sought time to take instructions from their respective clients on the suggestion mooted by themselves that if the appellant withdraws the present appeal then in that case the respondent will also withdraw the criminal case filed by her against the appellant under Sections 498-A/406 IPC.

The appellant is present in Court today along with his counsel Mr.Sudeep Singh, Advocate. The learned counsel for the appellant on instructions from the appellant submits that he wishes to continue with the

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present appeal and therefore, he is not agreeing to the suggestion mooted in Court on the last date of hearing.

Taking into consideration the said stand taken by the appellant, the suggestion which was transpired between the counsel for the parties on the last date has become inconsequential.

On the merits of the present appeal, counsel for the respondent vehemently submits that the present appeal filed by the appellant has become infructuous as the respondent got remarried on 12.05.2014 and is presently settled in the USA and is living happily with her husband. Counsel further submits that the respondent had waited for the period of limitation to expire and it is only after the appellant did not prefer any appeal that the respondent took a decision to re-marry. Counsel also submits that the judgment and decree passed by the learned Family Court, which is under challenge in the present appeal, was passed by the Family Court on 31.01.2013 and the limitation period to file an appeal against the said judgment and decree came to an end on 30.04.2013 and it is much thereafter the respondent got remarried.

Mr.Sudeep Singh, counsel for the appellant, on the other hand, submits that the appellant in fact had filed an appeal on 22.03.2013 vide

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MAT. APP. No.28/2013, but the same was withdrawn by the appellant vide order dated 12.08.2013. Counsel further submits that the said appeal was withdrawn by the appellant under a wrong notion that he had the remedy of filing an application under Order IX Rule 13 CPC and under this wrong notion the appellant had taken the leave of the Court to withdraw the said appeal and accordingly the appeal preferred by the appellant was dismissed as withdrawn with liberty as prayed for by the appellant.

We have heard learned counsel for the parties and perused the record.

By the judgement and decree dated 31.01.2013 passed by the learned Family Court, decree of divorce has been granted by the Court under Section 13 (1) (ia) and (ib) of the Hindu Marriage Act on the ground of cruelty and desertion in favour of the respondent/petitioner and against the appellant/respondent thereby dissolving the marriage of the parties. This judgement and decree was challenged by the appellant in an appeal preferred by him, but the said appeal was withdrawn by him vide order dated 12.08.2013.

As per the stand taken by the appellant, the said appeal was withdrawn by the appellant under a wrong notion that he had an efficacious remedy available to him to challenge the said order by filing an application

under Order IX Rule 13 CPC and keeping in view this remedy the appellant sought leave of the Court to take recourse to the remedy as was available to him under law and this liberty was granted by the Court. This stand taken by the appellant is highly misconceived keeping in view of the fact that the appellant had caused his appearance before the Family Court and had even filed an application under Section 24 of the Hindu Marriage Act read with Section 151 CPC seeking pendent-lite-maintenance from his wife, the respondent herein. The respondent was proceeded ex parte in the main petition as he had stopped appearing in the matter vide order dated 20.07.2001. After the appellant/respondent was proceeded ex parte, he had also moved an application to seek setting aside of the said ex parte order which too was dismissed by the Family Court vide order dated 12.07.2012.

In the background of these admitted facts, we fail to comprehend as to how the appellant can claim that he had the remedy to file an application under Order IX Rule 13 CPC. In any case, it is also an undisputed fact that the appellant never filed any such application before the Family Court. The leave which was granted by this Court was not to allow the appellant to file a fresh appeal again, but to seek his legal remedy other than that. Having consciously withdrawn the said appeal and then not having taken any steps

to seek any other legal remedy, the appellant cannot be now permitted to file a fresh appeal to challenge the same judgment and decree dated 31.01.2013. If the appellant is so permitted then it will amount to gross abuse of process of law. In this case, otherwise also, this appeal preferred by the appellant has become infructuous as the respondent in the meanwhile got remarried and this position has not been disputed by the appellant. The respondent is also settled in the USA and is leading a happy married life. Due to this fact also, this appeal practically has become infructuous.

There is no merit in the present appeal and the same is hereby dismissed.



KAILASH GAMBHIR, J.



I.S. MEHTA, J

APRIL 23, 2015

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