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

+ MAT.APP.(F.C.) 156/2014

% *Judgment dated 1st October, 2015*

ASHISH KUMAR Appellant

Through : Mr.Suhaib Alam, Adv. along with
appellant.

versus

YOGITA Respondent

Through : Mr.M.K. Malhotra, Adv. along with
respondent.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. Present appeal has been filed by the appellant under Section 19 of the Family Courts Act seeking a direction to set aside the Order dated 11.2.2013 passed by Judge, Family Court, in HMA No.41/13, by which the petition for grant of divorce by mutual consent was dismissed on the ground that the respondent had withdrawn her consent for divorce.
2. As per the petition, marriage between the parties was solemnised on 1.12.2008 as per Hindu rites. Out of their wedlock one child was born. On account of temperamental dispute, the parties started living separately from November 2010. Thereafter, the parties had decided to dissolve their marriage by filing a petition for divorce by mutual consent. The petition for First Motion was decided by the Family Courts on 11.6.2012. At the time of First Motion it was mutually agreed by the parties that appellant

shall pay Rs.5.50 lakhs to the respondent in full and final settlement. Out of Rs.5.50 lakhs, Rs.1.35 lakhs + Rs.50,000/-, respectively, were paid by way of two Demand Drafts in Court on the date of passing of order for the First Motion i.e. 11.6.2012. The second installment, in the sum of Rs.1.80 lakhs, was to be paid by the appellant to the respondent, by way of Fixed Deposit Receipts in the name of their child, under the guardianship of respondent. It was also agreed that appellant would pay Rs.50,000/- to the respondent at the time of making a statement at the Second Motion. The balance payment of Rs.1.35 lakhs was to be made at the time of quashing of FIR No.49/2012 lodged under Sections 498A/406 IPC at Police Station Rajouri Garden. All the dowry articles/stridhan were also returned by the appellant to the respondent at the time of First Motion. Thereafter the petition for grant of divorce (Second Motion) was filed in the year 2013. The petition was signed by the respondent but on 11.2.2013 she made a statement in Court that she did not want divorce by mutual consent and withdrew her consent. Against the said order dated 11.2.2013 the present appeal has been filed by the appellant.

3. Respondent is present in Court along with her brother, Mr.Lalit Malhotra. Respondent is duly identified by her counsel. In support of her identity, she has also handed over photocopy of her AADHAR Card. Mr.Lalit Malhotra has also handed over photocopy of his AADHAR Card.
4. Respondent submits that she had made a statement on 11.2.2013 on account of some misunderstanding. She further submits that she has no objection if HMA No.41/13 is revived to enable her to make a fresh statement with regard to grant of divorce before the Family Court, Dwarka.
5. Heard counsel for the parties and the parties who are present in Court. The statement made by respondent in Court is accepted. The statement made

shall be treated as an undertaking to the Court. Having regard to the statement made by the respondent, present appeal is allowed.

6. The order dated 11.2.2013 passed in HMA No.41/13 is set aside to enable the respondent to make a fresh statement with regard to grant of divorce (Second Motion) before the Family Court in Dwarka. It is also agreed by the parties that original FDR in the sum of Rs.1.80 lakhs in the name of the son of the parties shall be handed over to the respondent and Rs.50,000/- shall be paid to the respondent at the time of her making a statement in the Second Motion petition for grant of divorce. It is also agreed that the balance sum of Rs.1.35 lakhs shall be paid by the appellant to the respondent at the time of making a statement by respondent in the petition for quashing of FIR No.49/2012.
7. Accordingly, parties shall appear before the Family Court, Dwarka, in HMA No.41/13 on 12.10.2015.
8. Present petition stands disposed of in view of above.
9. List this matter before Court for reporting compliance on 2.11.2015, when the parties are directed to remain present in Court.
10. DASTI.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

OCTOBER 01, 2015

msr