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

+ CRL.M.C. 1085/2014

OM PRAKASH

..... Petitioner

Represented by: Mr.Rahul Kumar Singh,
Advocate

versus

SEEMA DEVI

..... Respondent

Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

ORDER

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07.09.2016

Crl.M.A.No.7094/2016

For the reasons stated in the application 210 days delay in filing the petition is condoned.

Application is allowed.

CM No.7092/2016

For the reasons stated in the application order dated August 25, 2015 dismissing petition filed by the application is recalled.

Application is allowed.

CRL.M.C. 1085/2014

1. The petitioner is aggrieved by the order dated December 16, 2013 denying DNA of a girl child born to the petitioner's wife on the ground that legal presumption attached by virtue of Section 112 of the Indian Evidence Act is sacrosanct and a husband cannot casually seek paternity of the child

born to his wife.

2. I agree.

3. Unless the petitioner establishes facts envisaged by the later part of Section 112 of the Indian Evidence Act, he cannot seek DNA to determine the paternity of the daughter born to his wife, which as per the wife was the result of her cohabitation with her husband : the petitioner.

4. Section 112 of the Indian Evidence Act makes legitimacy a conclusive proof if during the subsistence of a valid marriage a child is born unless it can be shown that there was no access to each other at any time when the child was begotten.

5. Dismissing the petition I observe that if at the trial the petitioner can produce evidence that at the time the child was begotten there was no access of the parties to each other he may file an application seeking paternity of his daughter afresh.

6. No costs.

PRADEEP NANDRAJOG, J.

SEPTEMBER 07, 2016

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