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

+ **Date of Decision: 05.01.2016**

% **MAT.APP. 7/2014**

SH A. P. Appellant

Through: Mr. Pawan Sharma, Advocate along
with appellant in person.

versus

SMT M. P. Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The aforesaid appeal is directed against the judgment & decree passed by the learned ADJ-01 (West), Delhi in HMA No.40/2009 [a petition preferred under Section 13(1)(ia), (ib) and 2(i) of the Hindu Marriage Act, 1955 (HMA) for dissolution of marriage]. The learned ADJ has allowed the petition preferred by the respondent/ wife. A decree of divorce was passed in favour of the respondent/ wife.

2. Learned counsel for the appellant was heard on 10.12.2015. After some arguments, since the Court expressed the view that there is no merit in the appeal, learned counsel for the appellant made his statement that he does not wish to press the appeal. Consequently, the appellant was required to remain personally present in Court to withdraw the appeal. On the next date, i.e. 15.12.2015, the following order came to be passed, and the matter

was adjourned for today:

“ Learned counsel for the petitioner states that the petitioner has gone to Himachal Pradesh. On the last date, the counsel had argued the matter and on it being pointed out that he had himself started living with another women and begotten a child from the said women, and the present appeal appears to be an exercise not only in futility but aimed at harassing the respondent wife and, consequently, an abuse of process of the court, the appellants counsel had stated that he does not wish to press the appeal.

Let the appellant remain present in court on the next date. List on 05.01.2016. ”

3. Today, the appellant is present with his counsel and the appellant does not wish to withdraw the appeal. Rather, learned counsel for the appellant has pressed the appeal and he has been heard.

4. Learned counsel for the appellant has submitted that even according to the respondent, she had resided with the appellant till 2002, whereafter she left the matrimonial home only on account of some misunderstanding. She stated that she does not wish to live with the appellant. Learned counsel submits that the aforesaid cannot afford justification for the respondent/ wife to either claim that the appellant had acted with cruelty towards the respondent/ wife, or that the appellant had deserted the respondent/ wife.

5. I have heard learned counsel for the appellant and perused the record and also perused the impugned judgment dated 31.08.2013 passed in HMA No.40/2009.

6. A perusal of the impugned judgment itself shows that the respondent/

wife had brought on record cogent evidence – which has also been relied upon by the learned ADJ, to the effect that the appellant/ husband had started living with one Ms. P, and he also begotten a child with the said Ms. P, who was born at RBI PMT Hospital, Kingsway Camp, New Delhi.

7. PW-2 Dr. Mukesh Kumar Singla, CMO, RBI PMT Hospital, Kingsway Camp, New Delhi, brought the original summoned record, which showed at entry No.255/14 that a birth of male child was recorded on 09.05.2007. The mother of the child was shown as Ms. P, and against the name of the father of the child, the name of the appellant with his residential address was recorded. He had also produced the birth certificate of the said child on record.

8. The respondent/ wife had also produced Sh. Animesh Kumar, Assistant Public Health Inspector, Narela Zone, Delhi, who brought the original summoned record. As per this record, the mother Ms. P and the father – who is the appellant, gave birth to a male child. This child was born at Lilawati Clinic, Khera Kalan, Narela. The original record was seen and returned and the copy was marked as Ex.PW-3/A.

9. On the basis of the aforesaid record, the learned ADJ concluded that it was conclusively established that the appellant had started living with Ms. P and their conjugal relationship had led to the birth of a male child on 09.05.2007. Though the learned ADJ preferred not to give a clear cut finding on the allegation that the appellant had got married to Ms. P in 2009 without the consent of the respondent/ wife – because Ms. P was not a party to the case and was not produced as a witness, yet the learned ADJ held that

the aforesaid conduct of the appellant/ husband in begetting a child with Ms. P tantamount to cruelty to the respondent/ wife.

10. The submission of learned counsel for the appellant that since December 2002, the respondent/ wife had deserted the appellant/ husband without any just cause, certainly cannot afford justification to the appellant/ husband to conduct himself in the manner that he has done. If he had any grievance with regard to the alleged desertion by the respondent/ wife, it was for him to seek appropriate legal remedy by either seeking restitution of conjugal rights, or to himself seek a decree of divorce on the basis of the alleged desertion by the respondent/ wife. However, he could not have started living with another woman and begotten a child with her. Such conduct of the respondent/ husband would cause immense mental cruelty to any wife, who cannot be expected to share her husband with another woman. Such conduct tantamounts to betrayal by the husband of the faith that binds the couple, without which the institution of marriage would be as good as dead. Moreover, such conduct gives rise to an independent ground for dissolution of marriage by a decree of divorce under clause (i) of Section 13(1) of the HMA.

11. On the last occasion when the appeal was heard, i.e. on 10.12.2015, this aspect had been pointed out to learned counsel for the appellant and on that premise, he had made his statement that he wishes to withdraw the appeal. In fact, the Court was shocked to see that the appellant was seriously seeking to press the appeal in the face of his aforesaid conduct. It had been conveyed to the appellant's counsel that the appeal appeared to have been preferred only with a view to harass the respondent/ wife. It had

been made clear to the counsel that the present appeal is an abuse of the process of Court and pressing of the appeal would invite exemplary costs, if ultimately, the Court does not agree with his submissions.

12. Today again, before the hearing started, it was made clear to the appellant as well as his counsel that in case the Court does not find merit in the submissions of the appellant, he would be subjected to exemplary costs for wasting the time of the Court by pressing a frivolous appeal. Despite the aforesaid notice, the appellant and his counsel have chosen to proceed with the matter.

13. It is frivolous cases like the present which result in unnecessary wastage of time of the Court. No doubt, a litigant who has right of appeal is entitled to exhaust the said right. However, the Court is not bound to, in every matter, admit the appeal and if on initial evaluation of the appeal, it appears that the same is absolutely meritless, the same may be disposed of summarily at the stage of admission itself.

14. In these circumstances, I am inclined to dismiss the present appeal with exemplary costs of Rs.5 Lakhs to be paid to the Delhi Legal Services Authority (DLSA). The appellant, admittedly, owns a 50 sq. yards plot, which would be his share in a joint holding in respect of an agricultural land situated at Village Malehra, Tehsil Barsar, District Hamirpur, Himachal Pradesh. The appellant shall stand restrained from dealing with the said property till the costs are realized from him.

15. A copy of this order be sent to the Tehsildar, Village Malehra, Tehsil Barsar, District Hamirpur, Himachal Pradesh, for strict compliance.

16. A copy of this order shall also be sent to the DLSA. In case the costs are not paid within six weeks, the DLSA shall inform the Registry, and thereafter, the matter shall be placed before the Court for further directions.

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

VIPIN SANGHI, J.

JANUARY 05, 2016

B.S. Rohella