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

+ MAT.APP. 45/2010

ATUL LUTHRA

..... Appellant

Through : Mr. Anup J. Bhambhani, Sr. Adv.
with Ms. Esha Mazumdar, Mr. Setu
Niket and Mr. Mukesh Gupta, Advs.
with appellant in person.

versus

ARTI LUTHRA

..... Respondent

Through : Mr. Anil Kumar Sharma, Adv. with
respondent in person.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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03.05.2016

MAT.APP. 45/2010 & CM No.5879/2016 (under Order 23 Rule 3 CPC)

By this appeal, appellant (husband) has challenged the judgment and decree dated 28th January, 2010 passed by the Additional District Judge (West)-01/(Delhi) in HMA No.657/2005, whereby petition, filed by the appellant under section 13(1)(ia) of the Hindu Marriage Act, has been dismissed.

During the pendency of appeal, appellant and respondent, who are present in Court, have compromised the matter on the terms and conditions as stipulated in the Memorandum of Understanding dated 12th February, 2016 and have filed the application under Order 23 Rule 3 CPC for passing a compromise decree. The application has been signed by the appellant and

respondent, inasmuch as, a photocopy of the Memorandum of Understanding has been annexed with the application. Original of the MOU has been produced in the Court and taken on record.

Joint statement of appellant and respondent has been recorded on oath wherein they have affirmed having settled the matter in terms of the MOU, which has been exhibited as Ex.A-1.

In the application, appellant and respondent have stated that compromise has been arrived at between them without any pressure, fear, coercion or force and the same is final. In terms of the settlement, appellant has already paid ₹1,25,00,000/- to the respondent towards all her past, present and future claims of money, properties, maintenance and alimony. Respondent has also agreed to waive and relinquish her rights in the property no.J-73, First Floor, RBI Enclave, Paschim Vihar, New Delhi. During course of hearing, it is submitted that daughters are now major and working.

In the similar facts and circumstances, a Division Bench of Karnataka High Court vide judgment dated 25th January, 2016 passed in Sri K. V. Mohan Kumar Vs. Smt. Pavitra has dissolved the marriage between the parties in view of the settlement arrived at between the parties during the

pendency of appeal filed by the husband, against the judgment and decree of the trial court. In the said case also Trial Court had dismissed the petition under section 13(1)(ib) of the Hindu Marriage Act for dissolution of marriage and husband had challenged the same in the appeal.

Learned counsel for the parties have also placed reliance on Avinash Chand Sharma Vs. Tarun Bala Sharma, 1984 HLR 260 wherein in the similar circumstances, a decree of divorce was passed in the appeal, in view of the compromise arrived at between the husband and wife.

For the forgoing reasons, the impugned judgment and decree dated 28th January, 2010, passed by the Learned Trial Court thereby dismissing the petition under section 13(1)(ia) of the HMA Act of the appellant, is hereby set aside. Marriage between the appellant and respondent is hereby dissolved by granting a decree of divorce on the terms and conditions as stipulated in the Ex.A-1.

Appeal and application are disposed of.

A.K. PATHAK, J.

MAY 03, 2016/dk