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

+ LPA 426/2016 & C.M. No. 27519/2016 (*stay*)

SHRI NIWASAppellant

Through : Mr. K.G. Bhagat, Advocate.

Versus

RAJNIRespondent

Through : None.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

% **09.09.2016**

C.M. No. 27521/2016 (*delay*) , C.M. No. 27523/2016 (*delay in re-filing*)

Heard.

In view of the facts and circumstances explained, the delay in filing as well as the re-filing is condoned and the applications are disposed of.

LPA No. 426/2016

1. This appeal is preferred under clause 10 of the Letters Patent against the order of the learned Single Judge dated 02.12.2015 in CM No.5191/2015 in MAT.APP No. 5/2015. It is not in dispute that the main Matrimonial Appeal which arises out of the order of Family Court dismissing the petition filed by the Appellant herein under Section 13 of the Hindu Marriage Act, 1955 for dissolution of marriage, is still pending. By the order under appeal, the learned Single Judge disposed of the application filed by the

wife/Respondent herein granting maintenance *pendente lite* for herself and the minor child who is in her custody.

2. Though an objection as to the maintainability of the present appeal under the Letters Patent was raised by the Registry, since it was contended by the learned counsel for the Appellant that the appeal is maintainable in the light of the law laid down by this Court as well as the other High Courts in various decisions, the appeal is listed before us subject to the objection as to the maintainability.

3. Therefore, the first question that requires consideration by us is as to whether the present appeal preferred under clause 10 of Letters Patent against an order passed by the learned Single Judge pending the Matrimonial Appeal arising out of an order of the Family Court dismissing the Petition under Section 13 of the Hindu Marriage Act, is maintainable.

4. At the outset, we may refer to Section 100A of Civil Procedure Code which reads as under:

"100A. No further appeal in certain cases.

Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a single Judge of a High Court, no further appeal shall lie from the judgment and decree of such single Judge."

5. Section 100A of CPC was interpreted by a Full Bench of this Court in LPA No.198/2008 titled ***Avtar Narain Behal Vs. Subhash Chander Behal***

while considering the question as to the maintainability of a Letters Patent Appeal against a judgment rendered by a Single Judge in a First Appeal arising out of a special enactment and it was held:

"24. In the light of the foregoing discussion, we hold that after insertion of Section 100A in the Code of Civil Procedure no Letters Patent Appeal is maintainable against the judgment rendered by a single Judge in a first appeal arising out of a special enactment e.g. Indian Succession Act. The appeal is, therefore, dismissed as not maintainable."

6. The above principle of law applies squarely to the present case. As noticed above, the Matrimonial Appeal No.5/2015 was preferred against the order and decree passed by the Family Court on a petition filed under Section 13 of the Hindu Marriage Act, 1955. As per Section 100A of CPC, there is a clear bar for maintaining a further appeal against the judgment of the single Judge in such an appeal much less against an order passed on a miscellaneous application pending such appeal.

7. Therefore, we uphold the office objection and the LPA is accordingly dismissed as not maintainable.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 09, 2016
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