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

+ **MAT.APP.(F.C.) 70/2016 & C.M.No.27483/2016**

DINESH GULATI Appellant

Through: Appellant in person.

versus

RANJANA GULATI Respondent

Through: Mr.Amit Pandey, Advocate

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **02.08.2016**

1. The appellant is aggrieved by the order dated 04.04.2016 whereby he was issued show cause notice to answer why contempt proceedings ought not to be proceeded with against him for non-compliance of the order recording the joint statement of the parties. The brief facts are that the appellant had initiated proceedings for dissolution of marriage between him and the respondent wife by HMA 545/ 2014. During the pendency of those proceedings the parties stated before the court that they had resolved their differences and they would move for a mutual consent divorce under Section 13-B of the Hindu Marriage Act, 1956. Apparently, for one reason or the other mutual consent divorce proceedings were not initiated. In these circumstances, the appellant moved contempt proceedings for initiating actions against the respondent wife. The contempt petition

was dismissed by the impugned order. At the same time, the court initiated – of its own accord *suo motu* contempt proceedings against the present appellant for non-compliance of the order and the joint statement dated 22.07.2014.

2. The recourse to the contempt proceedings in the circumstances of the present case as well as the orders passed on 04.04.2016 and 22.07.2014 (order recording joint statement of the parties) is baffling given that it completely neglects the mutuality aspect as provided for under Section 13B. It is not understandable how the court through its order initiated the coercive process of contempt proceedings, foreclosed the choice which the parties have by virtue of the mechanism under Section 13-B – to award mutual consent divorce in two stages. To put it differently – through the impugned order, the parties' right to step back at any stage stood negated. If the law permits the parties to rethink and not proceed with mutual consent divorce – a concept which is based upon mutuality, an agreement to divorce cannot be enforced in a manner that is sought to be done in the present case. It is settled law that even if a compromise is embodied in an order, its essential characteristics of being founded on a contract that casts upon an enforceable contract, is not in any manner undermined. If this essential reality is lost sight of, the parties may be faced with dangerous consequences – unintended legal result i.e. a residuary ground of divorce otherwise not thought of by Parliament or made into a separate ground for dissolution of marriage.

3. Having regard to the fact that the parties are unable to or do not wish to proceed with the agreement dated 22.07.2014 for a mutual

consent divorce, the appropriate recourse in our opinion would be to restore the original divorce petition HMA 545/2014 on the file of the case. The parties are directed to be present before the concerned Family Judge on the date fixed. The court shall thereafter proceed with the main petition for divorce referred by the appellant on its merits.

4. Appeal is allowed in the above terms. The pending application also stands disposed of.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

AUGUST 02, 2016

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