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

+ **MAT.APP.(F.C.) 126/2016**

HEMANT GUPTA

..... Appellant

Represented by: Mr.Manoj Goel, Mr.Jagmohan
Sharma, Mr.Rupam and
Ms.Rajni, Advocates.

versus

ROHINI GUPTA

..... Respondent

Represented by: None.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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29.08.2016

CM No.31328/2016

Allowed subject to all just exceptions.

CM Nos.31327 & 31329 of 2016

1. For the reasons stated in the two applications 73 days' delay in filing the appeal and 20 days' delay in re-filing the appeal are condoned.
2. Both the applications are disposed of.

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1. The appellant has sought a decree for divorce alleging adultery and cruelty against the respondent. The petition was filed under the Hindu Marriage Act, 1955 in Kanpur. Pursuant to the orders passed by the Supreme Court the said petition has been transferred to Delhi and has been

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registered as RBT/HMA No.37/15/13. It currently awaits adjudication before the Principal Judge, Family Court, Dwarka, New Delhi.

2. Respondent has filed a petition for restitution of conjugal rights in the Court of Principal Judge, Family Court, Dwarka. The same is registered as HMA No.394/2013.

3. Concededly the petition filed for divorce by the appellant precedes the date when the respondent filed the petition for restitution of conjugal rights.

4. In the petition filed by the respondent the appellant filed an application under Section 10 of Hindu Marriage Act, 1955 pleading that the principal issue which is the substantive issue between the parties would be decided in the petition seeking divorce filed by him and thus sought stay of the petition filed by the respondent.

5. Vide impugned order dated March 21, 2016 the learned Principal Judge, Family Court has held that notwithstanding the foundation of the two petitions being the marriage between the parties different issues arise for consideration in the two petitions.

6. Learned counsel for the appellant submits that if the appellant succeeds in establishing cruelty as also/or adultery, that would be a good ground for the husband to withdraw from the consortium and it would then be a case of constructive desertion. If the stand of the appellant fails, the respondent would have a good ground to establish her entitlement for restitution of conjugal rights.

7. The contention is prima facie well founded but we are of the opinion that the correct thing to be done would be to direct the learned Principal Judge, Family Court to consolidate the petition for divorce filed by the appellant with the petition for restitution of conjugal rights filed by the

respondent. Evidence to be led in the petition filed by the appellant.

8. We highlight once again. Both petitions are before the same Court.

9. We dispose of the appeal consolidating HMA No.394/2013 filed by the respondent with RBT/HMA No.37/15/13 filed by the appellant. Evidence shall be led in RBT/HMA No.37/15/13.

10. So directing the appeal is disposed of without there being any order as to costs.

CM No.31326/2016

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

PRATIBHA RANI, J.

AUGUST 29, 2016
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