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

+ **MAT.APP.(F.C.) 145/2016**

SEEMA

..... Appellant

Represented by: **Mr.Jitesh Talwani, Advocate**
with appellant in person

versus

SWAPAN KUMAR GUPTA

..... Respondent

Represented by: **In person**

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **14.12.2016**

1. It is a rather unfortunate case, but it cannot be helped.
2. Concededly the appellant and the respondent parted company on August 18, 2009. At a mediation settlement parties agreed to obtain divorce by mutual consent, which they did in terms of the settlement. It was also a term of the settlement that custody of Anmol and Pareena, the children born to the parties would be retained by the respondent. Appellant gave up even visitation rights.
3. It appears that the love of the mother and longing for the children festered for years together resulting in the appellant filing a petition under Section 26 of the Hindu Marriage Act, 1955 on August 03, 2015 seeking custody of the children. By then, Anmol has attained the age majority. Question of his custody became a non-issue.

4. As regards Pareena, impugned order dated May 23, 2016 records that the learned Judge, Family Court has interacted with Pareena than aged 13 years. She was a confident and a happy child. She refused to meet her mother. The result is appellant's application being dismissed.
5. In the appeal we had attempted to facilitate a meeting between the other and the daughter. Order dated October 06, 2016 records said fact.
6. The meeting had taken place in the Chamber of Pradeep Nandrajog, J. Both Judges constituting the Bench were present.
7. It was not recorded in the order that Pareena was very hesitant to meet her mother. What transpired between Pareena and the Bench in Chamber was also not recorded because the Bench was hopeful that Pareena could be persuaded to at least meet her mother.
8. But this is not possible for the reason the pleadings in appellant's application filed under Section 26 of the Hindu Marriage Act, 1955 blame the respondent of ill-treating the children, a fact which is incorrect because Pareena was very happy with her father. The allegation that the children are becoming mentally and physically weak is also incorrect. What has happened is that Pareena, who obviously was told by her father as to what her mother has alleged before she came to this Court, became more hostile to the mother.
9. We only wish that the learned counsel should have truthfully said in the petition that the love of the mother which was suppressed for seven years had led the mother to at least meet the children. If this would have been pleaded, Pareena could have been better counselled by us.
10. It being settled law that in issues of custody and visitation rights it is the interest of the children which is paramount. We note that for six long

years the appellant never made any attempt to meet her children, and when she parted company with the children, Pareena was seven years of age. Today Pareena is fourteen years of age. She just does not want to meet her mother, and nothing can be done.

11. With a heavy heart we dismiss the appeal only hoping that learned counsel for the appellant would be better advised, if he handles a case of the kind in future, to plead the truth and forget that in Courts unless you paint the opposite party black, and that too in matrimonial issues relief cannot be obtained.

12. No costs.

PRADEEP NANDRAJOG, J

YOGESH KHANNA, J

DECEMBER 14, 2016

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