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

+ MAT.APP.(F.C.) 34/2014

SMT DOLLY GUPTA

..... Appellant

Represented by: Mr.Jagdish C.Toor, Advocate

versus

SH VED PRAKASH

..... Respondent

Represented by: Mr.Gaurav Sarawat for
Mr.Yudhvair Singh Chauhan,
Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **23.01.2017**

1. Impugned decree notes that the appellant was proceeded against *ex parte* on May 15, 2016. The result was the deposition of the respondent, not been challenged during cross-examination and the compulsion of the Court to treat the allegations as proved.
2. Learned counsel for the appellant would concede that unless an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 is filed and allowed, as the impugned decree stands keeping in view the evidence the appellant would have no case in appeal.
3. Learned counsel for the appellant seeks leave to withdraw the appeal stating that the appellant would file an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 along with an application seeking delay in filing the said application be condoned and prays that it be observed

that this aspect of the matter was overlooked while notice was issued in the appeal and the same remained pending in this Court till today when aforesaid has been noticed today, meaning thereby, in respect of the time spent in this Court the learned Judge Family Court would take a liberal view.

4. Since issue of delay to be condoned would fall within the domain of learned Judge, Family Court, we simply observe that it would be for the learned Judge, Family Court to take a view on the matter concerning delay, but certainly this aspect would be kept in mind i.e. of appeal remaining pending in this Court for nearly three years.

5. The appeal is dismissed as not pressed.

6. No costs.

PRADEEP NANDRAJOG, J

YOGESH KHANNA, J

JANUARY 23, 2017

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