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

+ **MAT.APP.(F.C.) 113/2016**

SANGEETA

..... Appellant

Through : Mr. Manoj Kr. Srivastava and
Mr. Anuj Tyagi, Advocates
with appellant in person.

versus

ARUN JOON

..... Respondent

Through : Respondent in person.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

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26.05.2017

1. This order is in continuation of the order dated 24.5.2017, on which date, learned counsel for the appellant and the respondent, who had appeared in person, had jointly stated that the parties were able to arrive at a settlement before the Medication Cell, Rohini District Court, Delhi, reduced into writing on 12.5.2017. A copy of the aforesaid Settlement Agreement was handed over and taken on record. On the said date, the parties had requested that the impugned divorce decree passed by the learned Family Court under Section 13(i)(ia) of the Hindu Marriage Act, 1955 (in short '**the Act**') may be converted into a decree of divorce by mutual consent. We had left the aforesaid aspect open for consideration on the next date of hearing, i.e., today, after examining the legal position.

2. Today, learned counsel for the appellant concedes that after the judgement of the Supreme Court in the case of Anil Kumar Jain vs. Maya

Jain, reported as (2009) 10 SCC 415, wherein it has been held that the divorce decree can be granted by the Supreme Court under Article 142 of the Constitution of India on being satisfied that the marriage of the parties has broken down irretrievably, though irretrievable breakdown is not a specific ground available under Section 13 or 13-B of the Act, for grant of divorce. It was further declared that except for the Supreme Court, no High Court or civil court has the power to grant divorce on the ground of irretrievable breakdown of marriage without waiting for the expiry of statutory period of six months.

3. Learned counsel for the appellant states that subsequently, in the case of Neeti Malviya vs. Rakesh Malviya, reported as (2010) 6 SCC 413, the Supreme Court had taken note of the earlier decisions in the case of Manish Goel vs. Rohini Goel, reported as (2010) 4 SCC 393, Poonam vs. Sumit Tanwar, reported as (2010) 4 SCC 460, and Anil Kumar Jain (supra) and had expressed an opinion that in the light of the observations made in the said cases, it would be appropriate to refer the matter to a Bench of three Judges for a clear ruling as to whether the period prescribed in Section 13B(ii) of the Act can be waived or reduced by the Supreme Court in exercise of its jurisdiction under Article 142 of the Constitution of India.

4. In view of the aforesaid legal position, learned counsel for the appellant states that instead of pressing for the impugned divorce decree to be converted into a decree of divorce by mutual consent, the appellant may be permitted to withdraw the present appeal unconditionally, while binding the parties to the settlement reduced into writing on 12.5.2017.

5. The respondent, who appears in person, undertakes to abide by the terms and conditions of the settlement dated 12.5.2017 arrived at before the

Mediation Cell, Rohini District Court, Delhi. Both parties confirm that they have arrived at the aforesaid settlement of their own free will and volition and without any undue influence or coercion from any quarters.

6. The appeal is accordingly dismissed as withdrawn, while taking on record the settlement agreement and binding the parties to the terms and conditions recorded therein.

HIMA KOHLI, J

SANGITA DHINGRA SEHGAL, J

MAY 26, 2017

sk/ap

