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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1249/2016
GAURAV ARORA

..... Petitioner

Through Petitioner in person

versus

KUMKUM SHARMA & ANR

..... Respondents

Through None

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **01.02.2017**

CM No. 44885/2016 (Exemption)

Exemption allowed subject to all just exceptions.

Application disposed of.

CM No. 2162/2017 (Modification)

This is an application seeking modification of an earlier order dated 05.12.2016 vide which this Court has noted that since no substantive petition is pending under the Hindu Marriage Act an application under section 24 of the said Act would not be maintainable. Petitioner is aggrieved. He has placed reliance of the judgment of the Apex Court reported as **AIR 1968 111 Hulas Rai Baij Nath Vs. Firm K.B. Bass and Company.** This judgement reiterates the well settled principle that at the stage of withdrawal of the suit where no vested right has come in favour of the opposite party

there could be no ground on which the Court would refuse to allow the withdrawal of the suit. Reliance has also been placed upon a judgment of the Gujarat High Court reported as **II 1993 Hindu Marriage Act 25 Pratapbhai V. Trivedi Vs. Priyamvada @ Ghammu Pratapbhai**. The ratio of this judgement is that where a right had accrued in favour of a party to receive maintenance pendente lite the application under section 24 of the Hindu Marriage Act had to be decided in the first instance before permission could be granted to the other party to withdraw the suit.

These judgments do not come to the aid of the petitioner.

Record shows that the petition filed under section 9 of the Hindu Marriage Act had been withdrawn by the non-applicant/wife on 23.10.2015. In CM No. 1228/2015 an earlier Bench of this Court had noted that the right of the wife to withdraw this petition cannot be interfered with; at best the petitioner/estranged husband could have pressed for costs. This Court notes and reiterates the proposition noted in its order dated 05.12.2016; this is a legislative mandate.

No modification is called for in the said order.

Dismissed.

INDERMEET KAUR, J

FEBRUARY 01, 2017

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