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

+ **MAT.APP.(F.C.) 126/2017 & CM 26315/2017**

MAJOR ANUJ TYAGI

..... Appellant

Through : Mr. Manish Sangwan, Advocate with
appellant in person.

versus

SHIWANI TYAGI

..... Respondent

Through : None.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **26.07.2017**

1. The grievance raised in the present appeal is directed against an order dated 3.7.2017 passed by the learned Family Court, Dwarka, New Delhi whereunder, a notice has been issued to the respondent on an application filed by the appellant/husband under Section 26 of the Hindu Marriage Act, 1955 for grant of interim custody of the minor child aged three years.
2. Counsel for the appellant states that though he had urged before the learned Family Court that the appellant, who is a Major in the Indian Army, has come to Delhi on leave that shall expire on 3.9.2017, the said request has been disregarded and notice has been issued on the appellant's application returnable on 4.9.2017, the date already fixed in the main petition. He states that no useful purpose would be served if the appellant's application is taken up on 4.9.2017 as by then, he will have to report back on duty. It is stated that it has been over seven months since the appellant has met the minor child.

3. Counsel for the appellant is candid enough to admit that the main petition was listed before the Family Court on 1.7.2017 but since he was not inside the court room when the matter was called, it was adjourned to 4.9.2017. He states that though he had mentioned the case on the same day, but in the absence of the respondent, the learned Family Court had declined to advance the date. Thereafter, an application under Section 26 of the HMA Act came to be filed by the appellant on which, notice has been issued returnable on the date fixed, i.e. 4.9.2017.

4. Having regard to the submissions made by learned counsel for the appellant that he shall not be in Delhi after 3.9.2017, having exhausted the entire leave available to him in the year 2017 and he has not been able to meet his minor child after December, 2016, the date fixed before the learned Family Court in the Section 26 HMA Act is advanced to 3.8.2017. The appellant shall take immediate steps to file the process fee for effecting service of the Section 26 petition on the respondent or her counsel, by ordinary process, speed post and courier, returnable before the Family Court on 03.08.2017. The affidavit of service shall be placed before the learned Family Court on the date fixed.

5. The appeal is disposed of, along with the pending application.

6. A copy of this order shall be despatched by the Registry forthwith to the concerned court for information.

HIMA KOHLI, J

DEEPA SHARMA, J

JULY 26, 2017/sk/rkb