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

+ **FAO 428/2000**

GURMUKH KAUR

..... Appellant

Through: Mr. J.S. Ahuja brother of appellant.

Versus

WARINDER SINGH

..... Respondent

Through: Mr. Sanjay S. Chhabra and Vijay
Laxmi, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **27.09.2018**

1. This appeal under Section 28 of the Hindu Marriage Act, 1955 was preferred against the judgment [dated 5th August, 2000 in H.M.A. No.1104/1996 of the Court of the Additional District Judge] allowing the petition of the respondent husband under Section 13(1) (ia) and (ib) of the Hindu Marriage Act and dissolving the marriage of the parties.

2. The appeal came up before this Court first on 8th November, 2000 when it was admitted for hearing and notice thereof issued and operation of the impugned judgment and decree stayed. The counsels state that the said interim order continued. The appeal since then has been adjourned innumerable times.

3. The respondent husband is stated to have died as far back as on 16th July, 2015. The appellant wife filed an application for substitution of the mother and two brothers of the respondent husband as his heirs and which application was entertained, notice thereof issued and vide order dated 7th December, 2015 the application was allowed, on the counsel for the

aforesaid heirs of the respondent husband stating that he does not oppose the application. Resultantly, the mother and the two brothers of the deceased respondent husband now represent the deceased respondent husband.

4. Thereafter also the appeal has been adjourned from time to time with final arguments also being addressed thereon on at least four dates.

5. Today Mr. J.S. Ahuja brother of the appellant wife and the appellant on enquiry informed that the parties also have three children i.e. one son and two daughters all of whom are major and one of the daughters is married also and there is no enmity between the appellant wife and her said children.

6. I have enquired, that even if the appellant wife is not the heir of the deceased respondent husband owing to the decree of divorce, once the parties have three children, at least the three children would be the class I heirs along with the mother of the deceased, under Section 8 of the Hindu Succession Act, 1956 and in what capacity have the brothers of the deceased respondent husband been impleaded as his heirs. The brothers are class II heirs who succeed only in the event of there being no class I heir.

7. The counsel for the deceased respondent husband cannot explain.

8. The only impact of the decree of divorce under challenge in this appeal is of depriving the appellant wife of a share in the estate if any of the deceased respondent husband. However, even if the decree were to be set aside and the appellant wife were to also succeed as a heir of her husband along with her three children, she would still succeed along with the mother-in-law.

9. The counsel for the substituted heirs states that to his knowledge, there is no Will.

10. If no Will has come out till now, the possibility of any Will appears to be remote.

11. It thus appears that the parties have been needlessly pursuing this appeal for the last three years and there is no need for the appellant wife to seek setting aside of the decree for divorce. The remedy if any of the appellant wife for arrears if any of maintenance will have to be against the estate of the deceased respondent husband and qua which execution can be filed. Similarly, the claim of the children of the appellant wife to the estate of the deceased father will not be affected by this appeal.

12. The appeal is thus disposed of in above terms.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 27, 2018

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