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

% *Date of Judgement: 04th December, 2018*

+ **MAT.APP.(F.C.) 114/2018**

NOOR JAHAN

..... Appellant

Through **Ms. Amita Singh Kalkal, Advocate**

versus

HALEEM KHAN

..... Respondent

Through **Mr. Saurabh Kansal and Mr. Dishank
Dhawan, Advocates**

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S. SISTANI, J. (ORAL)

CM.APPL 20681/2018(delay)

1. This is an application filed by the applicant/appellant seeking condonation of 29 days delay in filing the present appeal. For the reasons stated in the application, the application is allowed. Delay of 29 days in filing the appeal is condoned.
2. The application stands disposed of.

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3. Challenge in this appeal is to the order dated 26.02.2018 passed by the Family Court by which a petition filed by the appellant seeking a decree of divorce filed under Section 2 of the Dissolution of Muslim Marriage Act, 1939 has been disposed by passing the following order:

“Parties have settled their dispute by way of settlement deed dated 22.01.2018 before the Principal Counselor, Family Court, PHC since the parties have mutually agreed to dissolve their marriage on the terms and conditions as mentioned in the settlement dated 22.01.2018. The respondent is directed to pay the amount of Rs.2,000/- towards maintenance of four children (Rs.500/- per child) every month to the petitioner as per the settlement arrived at Counseling Cell dated 22.01.2018. The Judgment in the case of *Md. Abdul Zalil Ahmed v. Marina Begum*, AIR 1999 Gauhati 28; *Binu P.A. Vs. Ashla, N.A.*, OP(FC) No.115/2017 decided on 06.04.2017 by the Hon’ble High Court of Kerala relied upon by the Ld. Counsel for the petitioner are not applicable to the facts and circumstances of the case.

Accordingly, this petition is disposed off as settled as per the settlement dated 22.01.2018 and the separate statements given by the parties to that effect before the court on 22.01.2018.

Parties are at liberty to follow the procedure/provisions under the relevant law for seeking decree of divorce.

File be consigned to record room.”

4. Counsel for the appellant submits that based on the settlement, the Family Court should have passed a decree of divorce and if the prayer so made was to be declined, in that case the petition should have been heard on merits.
5. We have heard the learned counsels for the parties. There is merit in the submission made by the learned counsel for the appellant. We may note that during the pendency of the proceedings, parties had arrived at an amicable settlement. In terms of the settlement dated 22.01.2018, parties had also appended their signatures on the

ordersheet. Thereafter, it seems that the respondent/husband has retracted from the settlement.

6. Counsel for the appellant has relied on *Md. Abdul Zalil Ahmed v. Marina Begum*, reported at *AIR 1999 Gauhati 28* and *Binu P.A. v. Ashla, N.A.*, OP(FC) No.115/2017 decided on 06.04.2017 by the High Court of Kerala in support of her submission that once a settlement has been signed, a decree must follow.
7. In our view, in case the Family Court is of the opinion that the case of *Md. Abdul Zalil Ahmed* (supra) and *Binu P.A.*(supra) would not apply to the facts of the present case, then the matter should be heard on merits.
8. Accordingly, the order dated 26.02.2018 passed by the Family Court is set aside.
9. Parties to appear before the Family Court on 18.12.2018.
10. The appeal stands disposed of in above terms.

G.S.SISTANI, J.

I.S. MEHTA, J.

DECEMBER 04, 2018

pst