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

+ CM(M) 610/2018 & CM No.21478/2018 (for stay)

SUJATA GANDHI

..... Petitioner

Through: Mr. Jatin Sehgal, Ms. Devna Soni,
Mr. Adhirath Singh, Mr. Harish
Malik, Mr. Shikhar Kumar & Mr.
Viren Bansal, Advs.

Versus

VIJAY GANDHI

..... Respondent

Through: Mr. S.N. Tripathi, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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12.09.2018

1. This petition under Article 227 of the Constitution of India impugns the order [dated 22nd March, 2018 in HMA No.498/2017 of the Court of Judge Family Court, South-East] to the extent making the petitioner wife liable for 50% of the fee of the commission issued for recording evidence in the proceedings filed by the respondent husband for dissolution of marriage with the petitioner wife by a decree of divorce under Section 13(1)(ia) and (ii) of the Hindu Marriage Act, 1955.
2. This petition came up first before this Court on 22nd May, 2018 when notice thereof was ordered to be issued, proceedings before the Family Court stayed and the record of the Family Court requisitioned in this Court.
3. The respondent husband has filed a reply to the petition.
4. Today morning, the counsels mentioned the matter for adjournment stating that the parties were exploring possibility of amicable settlement.

5. Adjournment was refused, being of the opinion that the said possibility if any be best explored before the Family Court which is also equipped to assist the parties and since the proceedings before the Family Court have been stayed by interim order in this petition.

6. I have drawn attention of the counsel for the respondent husband to the judgment of this Court in ***H. Dohil Constructions Co. Pvt. Ltd. Vs. Rohit Lal*** AIR 2014 Del.195 holding that without the consent of a litigant, the litigant cannot be burdened with cost of commission for recording evidence.

7. The counsel for the respondent husband states that the respondent husband also does not want evidence to be recorded on commission and wants the evidence to be recorded in the court itself.

8. Resultantly, the order dated 19th December, 2017, to the extent it issues commission for recording of evidence, with the consent of the counsels for the parties, is set aside.

9. The counsel for the petitioner wife states that the Family Court posted the divorce proceedings for recording of evidence without deciding the pending application of the petitioner wife under Section 24 of the Act.

10. The counsel for the respondent husband again fairly states that he has no objection to the said application being heard and decided by the Family Court.

11. Resultantly, it is further ordered that it will be open to the counsel for the petitioner wife to seek hearing on the application, if any, pending under Section 24 of the Act and the counsel for the respondent husband will join in

the same and the Family Court will decide the said application as expeditiously as possible.

12. It shall also be open to the parties to propose amicable settlement.

13. The petition is disposed of.

14. The trial court record be returned forthwith.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 12, 2018

‘gsr’..