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

% **Decided on: 15.01.2018**

+ MAT.APP.(F.C.) 3/2018, CM APPL. 1465/2018 (condonation of delay 59 days in filing)

R B B

..... Appellant

Through: Mr Ranjay. N., Adv.

versus

LTG S D B (RETD)

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

SIDDHARTH MRIDUL, J. (ORAL)

CM APPL. 1467/2018 (for exemption)

Exemption allowed, subject to all just exceptions.

The application is disposed off.

CM APPL. 1466/2018 (Condonation of delay 45 days in re-filing)

For the reasons stated in the application, the delay of 45 days in re-filing the appeal is condoned.

The application is disposed off.

CM APPL. 1464/2018 (Stay)

Learned counsel for the appellant seeks leave to withdraw this application.

The application is dismissed as withdrawn.

MAT.APP.(F.C.) 3/2018

1. The present appeal under Section 19 of the Family Courts Act, 1984, assails a judgment and decree dated 11.07.2017, rendered by the Principal Judge, Family Courts, Central District, Tis Hazari Courts, Delhi, in HMA No.61212/2016 titled as “*Col. Sat Dev Bajaj vs. Rina Bains Bajaj and Anr.*” (hereinafter referred to as ‘the subject petition’), whereby, the petition seeking dissolution of marriage on the ground of ‘cruelty’ under Section 13(1)(ia) of Hindu Marriage Act, 1955 (hereinafter referred to as ‘the said Act’) was allowed and decree of dissolution of marriage was passed in favour of the respondent-husband.

2. The solitary ground on which the appeal is pressed is that the learned Family Court fell into error in disposing off the application instituted by the appellant-wife under Section 24 of the said Act, on the ground that appellant-wife had not pressed the same.

3. In respect of the sole submission made on behalf of the appellant-wife, it would be pertinent to observe that during the pendency of the trial of the subject petition, the appellant-wife had instituted an application under Section 24 of the said Act, which came to be dismissed by the then learned Additional District & Sessions Judge, Delhi vide order dated 14.02.2002; on the ground that affidavit and verification of the contents of the application, in accordance with the extant Delhi High Court Rules, had not been filed along with the said application. Learned counsel appearing on behalf of the appellant admits that the said order dated 14.02.2002 has attained finality.

4. Further, it is observed that another application dated 13.11.2006 under Section 24 of the said Act was thereafter moved on behalf of the appellant, which came to be determined by the Court of competent jurisdiction on 24.03.2007; with a finding that the appellant was responsible for the delay in disposal of the application. However, the respondent-husband was called upon to file income-tax returns for the last three years, along with the pay slip and Form-16. Further, in view of the consideration that the respondent husband was bearing the educational expenses of the daughter of the estranged couple, it was opined that there was no urgency to pass any order for the maintenance of the child. It is an admitted position that the said order dated 24.03.2007 has also attained finality. In this behalf, it would also be necessary to note that neither of the parties have filed their income-tax returns on affidavit, and the application which is sought to be re-agitated before us now as not pressed by the appellant before the learned Family Court since its institution; assertively in the year 2007.

5. In this view of the matter, in our considered view, it is late in the day for the appellant to seek reopening of the issue of maintenance *pendente lite*, having been lackadaisical in prosecuting it before the learned Family Court. Needless to state that the appellant is at liberty to initiate appropriate proceedings for any other reliefs as may be permissible in accordance with law.

6. Therefore, the solitary submission made on behalf of the appellant in relation to the grant of interim maintenance is not tenable and devoid of any merit. The same is accordingly rejected.

7. No other point was urged before this Court.

8. Resultantly, the impugned judgment and order dated 11.07.2017 is upheld and the present appeal is dismissed, whilst reserving liberty as afore-stated.

9. In view of the dismissal of appeal on merits, the pending application also stands disposed off.

**SIDDHARTH MRIDUL, J
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

JANUARY 15, 2018

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