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

+ CM(M) 1424/2017

P Petitioner
Through: Mr. Yash Anand, Advocate

versus

P Respondent
Through: Mr. Vineet Mehta, Advocate

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

% **ORDER**
30.01.2018

1. The petitioner has challenged the order dated 07th September, 2017, whereby the learned Family Court appointed a local commissioner to record the evidence. The petitioner has also challenged the order dated 07th November, 2017 whereby the learned Family Court dismissed the petitioner's application for review of the order dated 07th September, 2017.
2. Learned counsel for the petitioner urged at the time of the hearing that the petitioner's application under Section 24 of the Hindu Marriage Act is still pending and has not been decided by the learned Family Court. It is submitted that the evidence should be recorded after the disposal of the petitioner's application under Section 24 of the Hindu Marriage Act. It is further submitted that the petitioner had not given consent for appointment of the local commissioner and according to the petitioner, there is no sufficient reason for recording of the evidence by the local commissioner.
3. Learned counsel for the respondent submits that the petitioner initially gave her no objection to the appointment of the local commissioner which is recorded in the order dated 07th September, 2017. It is further submitted that

the petitioner sought appointment of local commissioner for expeditious recording of the evidence considering that the Family Courts are overburdened with the huge pendency of the cases.

4. With respect to the petitioner's application for maintenance under Section 24 of the Hindu Marriage Act, it is submitted that the petitioner filed application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 for maintenance which was dismissed by the learned Metropolitan Magistrate vide order dated 19th May, 2017 and the petitioner's appeal against the said order has also been dismissed. It is further submitted that in view of the maintenance application filed by the petitioner under the Protection of Women from Domestic Violence Act, 2005, the petitioner did not press the application under Section 24 of the Hindu Marriage Act and the same was disposed of by the learned Family Court.

5. Learned counsel for the petitioner submits that she never stated before the learned Family Court that she does not press the application under Section 24 of the Hindu Marriage Act and the said application be directed to be taken up by the learned Family Court.

6. Learned counsel for the respondent submits that the petitioner's application under Section 24 of the Hindu Marriage Act does not survive anymore in view of the petitioner's application under the Protection of Women from Domestic Violence Act, 2005 having been dismissed on merits.

7. This Court is of the view that there is no infirmity in the impugned orders dated 07th September, 2017 as well as 07th November, 2017. Insofar as the petitioner's application under Section 24 of the Hindu Marriage Act is concerned, the learned Family Court shall consider the same and pass appropriate orders in accordance with law.

8. Learned counsels for the parties submit that the proceedings before

the learned Family Court are listed on 08th March, 2018 and both the parties agree not to seek any adjournment on the said date. In that view of the matter, the learned Family Court shall proceed to hear the petitioner's application under Section 24 of the Hindu Marriage Act.

9. This petition is disposed of in the above terms.

10. C.M. Appl. 45601/2017 is dismissed.

11. It is clarified that this Court has not examined the petitioner's claim for maintenance on merits and nothing recorded herein should be considered as an expression on the merits of the petitioner's case for maintenance.

12. Copy of this order be given *dasti* to learned counsels for the parties under signature of Court Master.

J.R. MIDHA, J.

JANUARY 30, 2018
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