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

% *Date of Order: 21.12.2018*

+ **Cont. Cas. (C) No.966/2018**

ASHISH KAPOOR Petitioner

Through: Mr. Sanjay Sharawat, Mr. Divyank
Rana & Mr. Ashok Kumar,
Advocates.

Versus

BARKHA KAPOORRespondent

**CORAM:
HON'BLE MR. JUSTICE VINOD GOEL**

C.M. No.54379/2018 (for exemption)

Allowed, subject to all just exceptions.

The application stands disposed of.

Cont. Cas. (C) No.966/2018

1. By this petition under Section 10 and 12 of the Contempt of Courts Act, 1971, the petitioner seeks initiation of contempt proceedings against the respondent/contemnor for deliberately resiling from the settlement dated 10.11.2017 and for violating the order dated 08.01.2018 passed by the court of the learned Judge, Family Court, Shahdara District, Delhi in HMA No.255/2017 and punish her in accordance with law.

2. Learned counsel for the petitioner contends that the marriage of the petitioner and the respondent was solemnized, as per Hindu rites

and customs, on 23.04.2008 but due to temperamental differences, they started residing separately. The petitioner filed a divorce petition against the respondent being HMA case No.543/2017 under Section 13 (1-ia) of Hindu Marriage Act, 1955 ('HMA'). The matter was referred to the mediation where a settlement agreement dated 10.11.2017 was arrived at between the parties. It was settled that the petitioner shall pay Rs.6 lacs to the respondent and also execute a gift deed in the name of his son, Mayank Kapoor, for his 50 per cent share in the property being Flat No.1/6258, Second Floor, Gali No.4, East Rohtash Nagar, Shahdara, Delhi-110032. Further, it was settled that the parties would part company of each other and shall obtain a decree of divorce by mutual consent.

3. Pursuant to the settlement, a divorce petition by mutual consent under Section 13-B (1) of HMA, being HMA No.255/2017 was filed, which was disposed of on 08.01.2018 with the following order :-

“This is a petition of first motion for seeking divorce by mutual consent u/s 13-B (1) of HMA.

The joint statement of both the petitioners is recorded.

Petitioner No.1 gave Rs.3 lakhs in the shape of FDR in the name of son Mayank Kapoor and petitioner No.2 undertook not to get the same encashed unless a need arises in terms of para no.8 (V) of the petition. She is bound by this undertaking.

Vide separate order, this petition is allowed. Though the matter is already settled in Mediation Cell and it has been decided to live separately but

parties are directed to try to patch up their differences, if possible during the statutory period of six months before moving a petition qua second motion. File be consigned to record room.”

4. Learned counsel submits that at the time of settlement, the petitioner had paid Rs.1 lacs to the respondent by way of a demand draft. He further paid Rs.3 lacs by way of a demand draft and a cheque of Rs.4,700/- at the time of first motion. He submits that the petitioner is ready to make the payment of the balance amount of Rs.2 lacs and execute a gift deed in respect of the 50 per cent share of the said property. He contends that despite the petitioner's best efforts, the respondent is not coming forward for compliance and is not willing to file a petition for second motion for divorce by mutual consent, as agreed in wilful breach of the settlement.

5. In the impugned order there is no direction by the Court to the respondent. Rather, the learned Judge, Family Court, has observed that though the matter is resolved in the Mediation Cell and the parties have decided to live separately, yet they were directed to try to patch up their differences, if possible, before moving a petition qua the second motion. So, there is no violation of any direction of the Family Court. I do not find any merit in the petition. Accordingly, the contempt petition is dismissed with no order as to costs.

(VINOD GOEL)
JUDGE

DECEMBER 21, 2018
‘AA’