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

% *Date of Judgment: 26th March, 2019*

+ MAT.APP.(F.C.) 217/2017

S G

..... Appellant

Through Mr. Aman Mehta, Advocate

versus

S G

..... Respondent

Through Mr. Rishi Kapoor, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

1. The present appeal is directed against the order dated 06.12.2017 passed by the Family Court, more particularly, the order pertaining to release of Rs.1.09 Crores deposited in HSBC Bank in favour of the respondent/husband.
2. In this case, the marriage between the parties was solemnized as far back as on 06.07.1999. Parties have been residing separately since 14.01.2006. A flat was purchased in Mumbai in the joint names of the parties in February, 2005. Admittedly, the EMIs of the flat have been paid by the respondent/husband. Since the amount of loan could not be cleared by the parties, the Bank took recourse to SRFAESI Act, 2002

and ultimately the flat was sold to clear the loan amount. The excess amount of Rs.1.09 Crores was deposited with HSBC Bank in the name of both the parties. On an application filed by the respondent/husband, the Family Court has ordered for release of the amount of Rs.1.09 Crores in favour of the respondent/husband, which has led to the filing of the present appeal.

3. Mr. Mehta, learned counsel appearing for the appellant submits that the husband is not entitled to this amount as the property is a joint property and stood in the names of husband and wife. Mr. Kapoor, learned counsel appearing for the respondent, on the other hand, submits that all the EMIs have been paid by the respondent and he is the actual and true owner as all the EMIs were paid by him. Additionally, it is contended that the husband has regularly paid interim maintenance of Rs.2.0 lakhs per month to the appellant/wife and till date he had paid more than Rs.78 lakhs to her. It is also contended that he has paid more than Rs.10,55,124/- as Tax. A Certificate from his Chartered Accountant (CA) has been produced in Court. In this backdrop, counsel for the respondent submits that the respondent being the actual owner is entitled to the amount and thus, there is no infirmity in the order passed by the Family Court. Mr. Mehta, learned counsel for the appellant, on the contrary, submits that no amount has been paid as Tax by the respondent and the Certificate issued by the CA is false.
4. We have heard the learned counsels for the parties. A flat purchased in Mumbai in the joint names of the parties in the month of February, 2005 was sold by the bank as the loan was not cleared. After the dues of the bank were adjusted, a sum of Rs.1.09 Crores was deposited in

HSBC Bank. An application was filed by the respondent/husband for release of the amount in his favour, which was allowed by the Family Court. The order of the Family Court has been assailed before us on the ground that since the property was in the joint names of both the parties, the balance of the sale proceeds should accordingly be divided between both the parties. The stand of the respondent is that the wife has been a housewife and the property was purchased by him out of his own funds. All the EMIs were paid by him and thus, the wife would have no claim over this amount.

5. By an order dated 14.12.2017, 50% of the amount already stands released in favour of the respondent/husband. The respondent has, prima facie, also cleared the tax liabilities. Admittedly, there are various litigations pending between the parties. In the absence of any definite finding with regard to ownership of the property, we are of the considered view that, at this stage, the 50% share as claimed by the wife should be preserved. Mr. Kapoor, learned counsel for the respondent complains that HSBC Bank is only offering 5% interest per annum. Accordingly, we direct the HSBC Bank to make a draft in the name of Registrar General of this Court of the entire amount. The Registrar General of this Court will forthwith make a Fixed Deposit with UCO Bank at a higher rate of interest initially for a period of two years. We make it clear that the rights and contentions of both the parties with respect to their right and title over the amount is kept open and shall be decided along with the substantive petitions which are already pending between the parties. Accordingly, the order dated 06.12.2017 passed by the Family Court is modified.

6. With these directions, the appeal stands disposed of in above terms.
7. At this stage, Mr. Kapoor, learned counsel for the respondent submits that he will institute a suit for declaration against the appellant under the Benami Transactions (Prohibition) Amendment Act.

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8. The application stands disposed of in view of the orders passed in the appeal.

G.S.SISTANI, J

JYOTI SINGH, J

MARCH 26, 2019

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