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

+ **MAT.APP.(F.C.) 286/2019 & C.M. APPL. 47723/2019**

ANJURI KUMARI

..... Appellant

Through: Mr. Kanwalpreet, Mr. Vikas Saini,
Ms. Meena Devi & Mr. Jai Subhash
Thakur Advocates

versus

LAXMAN KUMAR

..... Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

% **17.01.2020**

1. The present appeal has been filed by the appellant assailing the order dated 24.03.2018, passed by the Family Court, East District, Karkardooma Courts, Delhi, whereunder her marriage with the respondent has been dissolved by passing a decree of divorce by mutual consent from the said date.

2. We may note that in October, 2017, the First Motion Petition for divorce under Section 13B of the Hindu Marriage Act, 1955, was jointly moved by the parties before the Family Court. In the order dated 09.10.2017, the Family Court recorded the fact that the parties had got married at Haridwar, Uttrakhand on 10.11.2010, as per Hindu rites and customs. The said marriage was consummated and the parties were blessed with a son. Since June, 2016, the parties had been residing separately due to temperamental differences. After efforts for a re-union failed, the parties had

decided to part company on amicable terms. The said order refers to the contents of Ex. P-1, which learned counsel for the appellant states is the First Motion Petition wherein, the terms and conditions of the settlement arrived at between the parties were recorded, which included a condition that the custody of the minor child shall remain with the respondent and the appellant shall not have any right to meet him or claim his custody. The other terms and conditions settled between the parties were also set out in paragraph No. 4 of the First Motion Petition.

3. The First Motion Petition was allowed by the Family Court by specifically recording in the order dated 09.10.2017 that both the parties had stated that they had entered into a settlement of their own free will, free from any fraud, pressure coercion or undue influence etc. and that they were agreeable to bring to a complete end, all their *inter se* litigations and further, that they would abide by the stipulations contained in the First Motion Petition and their joint statements made therein. In para 3 of the said order, the Family Court recorded the statement made by the appellant that she did not wish to claim any amount from the respondent. It was also recorded that the appellant was explained the consequences of not claiming any amount from the respondent, in vernacular/Hindi by the court as well as by her counsel, but she had remained firm on her stand. In para 4 of the order, it was recorded that the parties had agreed that the care and custody of the minor child will remain with the respondent/father and the appellant shall not have any visitation rights in respect of the child.

4. Subsequently, the appellant and the petitioner moved a Second Motion Petition on 24.03.2018, seeking dissolution of their marriage. Vide

order dated 24.03.2018, the Family Court allowed the said petition after recording the joint statement of the parties, which is reproduced herein below:-

“On S.A.

*We got married on 10.11.2010 at Uttarakhand, as per Hindu rites and ceremonies. The marriage was duly consummated and out of the wedlock one boy namely Devraj was born and **the custody of the said child shall remain with petitioner no. 1/husband and petitioner no. 2/wife shall have no visitation rights.** Parties have been living separately since June, 2016. Despite intervention of family, friends, relatives and well wishers we could not reconcile our disputes and could not reside together as husband and wife. Now there is no chance of living together as husband and wife and we have finally decided to part our ways by taking divorce by mutual consent.*

*Order in first motion petition bearing HMA No. 1111/17 has been passed on 09.10.2017. **Petitioner no. 2 has settled all her claims and disputes with regard to maintenance (past, present and future), permanent alimony and istridhan against the petitioner no. 1.** Petitioner no. 2 has already received all her dowry articles, jewellery and belongings from the petitioner no. 1. Both of us undertake not to file or initiate any kind of criminal/civil complaint against each other and family members of each other before any court, forum or authority arising out of their matrimonial disputes. **We undertake to abide by our statement made by us today before the court and mentioned in the petition Ex. P-1, which bears our signatures at point A and B.** There is no collusion between us in filing the present petition for divorce by mutual consent and **we are making this statement voluntarily without any force, coercion, fraud, misrepresentation or undue influence.***

First motion petition of mutual divorce bearing HMA No. 1111/17 was allowed vide order dated 09.10.2017. Certified copy of the statement and order in the first motion is Ex. P-2 and Ex. P-3 respectively, photocopy of Aadhaar card of petitioner no.1 and photocopy of Aadhaar card of petitioner no. 2 are Ex. P-4 and Ex. P-5 (OSR) respectively, certified copy of marriage certificate is Ex. P-6.

We pray that our marriage may be dissolved by a decree of divorce by mutual consent.

Our joint statement is correct and no other dispute is pending between us.
RO&AC”

(Emphasis added)

5. We may note that the appellant and the respondent had appended their signatures along with their thumb impressions on their joint statements while praying for dissolution of their marriage.

6. After a year and a half, the present appeal has been preferred by the appellant praying *inter alia* for setting aside the decree of divorce by mutual consent granted by the Family Court on the ground that she wishes to have access to the minor child. Learned counsel for the appellant states that the respondent has played a fraud on the appellant as she was unaware of what was written or signed by her. He further states that the respondent has remarried and the appellant has a genuine apprehension that her child may be ignored and ill-treated.

7. In the light of the fact that the joint petition for divorce by mutual consent was duly signed and filed by the parties, who had thereafter appeared before the Family Court and based on their submission, the First Motion Petition was allowed on 09.10.2017, which order specifically recorded *inter alia*, the terms and conditions of their settlement and in particular, those relating to the care and custody of the minor child and further, having regard to the fact that after completing the cooling off period of 6 months, the appellant and the respondent had once again approached the Family Court with a Second Motion Petition for divorce by mutual consent

reiterating therein all that was stated by them in the First Motion Petition, including the aspect regarding the care and custody of the minor child, which has been specifically recorded in the order dated 24.03.2019 passed by the Family Court before proceeding to dissolve the marriage of the parties by granting a decree of divorce by mutual consent, merely because the appellant is now having second thoughts about her decision, can hardly be a ground for this court to turn over the decree of divorce.

8. The present appeal is accordingly dismissed *in limine* as meritless along with the pending application.

HIMA KOHLI, J

ASHA MENON, J

JANUARY 17, 2020/sm/s