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

+ **CONT.CAS(C) 777/2018**

ATUL KUMAR Petitioner

Through: Mr. Waris Ali, Advocate with
Petitioner in person.

Versus

ARTI UPADHAY Respondent

Through: Ms. Mamta Nayer, Advocate with
Ms. Mohini, & Mr. K.K.Krishna
Prabhu, Advocates

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **11.03.2020**

Office report says that rejoinder in the matter has not been filed. Mr. Waris Ali, learned counsel appearing for the petitioner however states that rejoinder has been filed today, by reason of which it is obviously not on record. Be that as it may, in view of the merits of the matter otherwise, it is not necessary to await the rejoinder.

In this contempt petition, the petitioner has made the following prayer:-

“a) Respondent may be punished for the contempt of courts for the violation of Order 1.09.2017 passed by Hon’ble High Court of Delhi in Crl,M.C. No.4207/2016 titled Atul Kumar Vs. State of NCT of Delhi & Ors. in the interest of justice;”

Order dated 01.09.2017 made in Crl.M.C. No.4207/2016 referred to above is an order whereby FIR No.178/2016 under Sections 498-A/406/34 IPC registered at PS Crime (Women) Cell, Nanak Pura, Delhi was quashed by the court based upon Settlement Agreement dated 11.01.2017 arrived at between the parties under the aegis of the Delhi High Court Mediation & Conciliation Centre. By way of the settlement, the petitioner/husband and respondent/wife had *inter alia* agreed to obtain divorce by mutual consent and to close/quash related proceedings, being proceedings under section 125 Cr.P.C., proceedings under the Domestic Violence Act 2005, proceedings in the FIR ; as also proceedings in a Guardianship Petition and an Execution Petition, which were at that time pending between the parties.

Learned counsel for the petitioner contends that the respondent is in breach of the term of settlement as contained in clause (i) of the Settlement Agreement :-

“i) It has also been agreed by the parties that after signing of the present settlement agreement, the First Party will have the meeting rights i.e. he can meet his son master Samar on 3rd Saturday of the each English Calendar month in the Child room of Family Courts, Rohini, Delhi between 2:00 to 4:00 p.m. In any eventuality, if the day or time is to be changed for meeting of the child it shall be done with the prior consent of both the parties.”

On the other hand Ms. Mamta Nayer, learned counsel appearing for the respondent contends that the respondent has filed an application under Section 151 CPC in HMA No.1019/2017, whereby the marriage between the parties has been dissolved by mutual consent upon moving of the second

motion to seek modification of the order relating to visitation rights of the petitioner on certain grounds. Counsel contends that the petitioner has misused and abused his visitation rights, by reason of which the respondent has been constrained to move the application seeking modification of the term of settlement quoted above.

Counsel for the respondent further contends that the modification application is pending consideration before the Family Court and is listed next on 13th April 2020.

Be that as it may, a perusal of the prayer made in this petition shows that the petitioner is alleging violation of order dated 01.09.2017 whereby the FIR registered against the petitioner was quashed. In relation to the quashing of the FIR, the only commitment of the respondent was as contained in clause (f) of the Settlement Agreement, which reads as under:-

“f) Both the parties undertake that after the recording of the statement of second motion, the First Party shall move an appropriate petition before this Hon’ble Court for quashing of the above said FIR and the Second Party undertakes to cooperate to get the said FIR quashed filed against the First Party and his parents.”

Evidently therefore, insofar as order dated 01.09.2017 is concerned, the respondent has duly complied with the obligation on her part by making the requisite statement in court and co-operating in the quashing of the FIR. In any event there was nothing in order dated 01.09.2017 for compliance by the respondent, the breach of which may be alleged against her.

In the above view of the matter, nothing survives in the present petition. The petition is accordingly dismissed.

It is made clear that the dismissal of the present petition will not in any way reflect on the merits of the application for modification of visitation rights, that is stated to be pending before the Family Court.

ANUP JAIRAM BHAMBHANI, J.

MARCH 11, 2020/vk

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