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

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Date of decision: 10.07.2023

+ MAT.APP.(F.C.) 214/2022 & CM APPL.55716/2022 & 2594/2023

GAURAV BHARDWAJ

..... Appellant

Through: Mr.Prabhjit Jauhar, Adv.

versus

BHUMIKA ARORA

..... Respondent

Through: Mr.Prashant Mendiratta &
Ms.Somyashree, Advs. with
respondent through VC.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. Present appeal has been filed by the appellant seeking setting aside of order dated 05.12.2022 passed by the learned Family Court, Rohini Court Complex, New Delhi to the extent whereby ex-parte stay of the proceedings in case No.2022-516100-DM before 6th Circuit Court of Oakland Connty, Family Division, State of Michigan, United State of America has been granted against the appellant herein.

2. The facts as noted in order dated 14.11.2022 by the learned Trial Court are that the marriage between the parties was consummated as per Hindu rites on 08.02.2012 and a male child namely Master Rajveer was born on 07.02.2017. The parties thereafter started living together in USA, however, due to strained relations, they started living separately since

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06.03.2022 when the respondent/wife came back to India along with minor son. The wife resorted to proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005 wherein the court below vide order dated 05.12.2022 held as under:

“In the case in hand, both the parties are Indian citizens. They were married in India as per Hindu Marriage Act and their marriage has to be dissolved under the provisions of Hindu Marriage Act. They both have properties in India and even the basic documents like passport, PAN Card and Aadhar card of the defendant are also issued on Indian address. The plaintiff/wife is in India since March 2022 and she has no permanent/independent residence in US and clearly she has no support mechanism to defend a case in US court. Further although, the parties have been living in US/UK for several years but during the said period also they have spent a considerable time in India at regular intervals. They both have families in India. Moreover, the plaintiff has at no point of time, submitted to the jurisdiction of the US court while on the other hand, the defendant has already participated in the D.V. Act proceedings in India before filing the above divorce petition. Further although the defendant has made a prayer for handing over the custody of the child in the petition for dissolution of marriage which has been filed in US but the main relief is for seeking dissolution of marriage.”

3. Against the aforesaid order dated 05.12.2022, the appellant has approached this Court for the relief noted hereinabove.
 4. During the course of hearing today, learned counsel appearing on behalf of appellant submitted that impugned orders dated 14.11.2022 and 05.12.2022 be modified to the extent that the appellant/husband be permitted to withdraw the divorce proceedings pending before the US Court, which is not objected to by learned counsel appearing on behalf of the respondent.
 5. In view of the aforesaid submissions made on behalf of both the sides,
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impugned orders dated 14.11.2022 and 05.12.2022 are modified to the extent that appellant is permitted to withdraw divorce proceedings pending before the US Court.

6. In view of the fact that the male child of the parties has been in custody of his mother since her arrival in India on 06.03.2022, we hereby make it clear that this Court has not observed with regard to pendency of the proceedings before the US Court pertaining to the custody of the child and if the US Court has jurisdiction to consider it and any order is passed on the next date i.e. 12.08.2023 by the US Court, a copy of the said order be produced before the learned trial court.

7. With the aforesaid directions, the present appeal and pending applications stand disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

JULY 10, 2023/ab