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

% *Date of decision: 12.01.2024*

+ **MAT.APP.(F.C.) 19/2024**

MUKUND KUMAR JHA Appellant

Through: Mr Adarsh Varma, Advocate.

versus

RITA JHA Respondent

Through: None.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE AMIT BANSAL

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

CM APPL. 2200/2024

1. Allowed, subject to just exceptions.

CM APPL. 2201/2024 *[Application filed on behalf of the appellant seeking condonation of delay of 38 days in filing the appeal]*

2. This is an application filed on behalf of the appellant, seeking condonation of delay in filing the appeal.

2.1 According to the appellant, there is a delay of 38 days in filing the appeal.

3. Since we intend to dispose of the appeal, the delay is condoned.

4. The application is, accordingly, disposed of.



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5. This appeal is directed against the order dated 19.10.2023, passed by the learned Principal Judge (West), Family Courts, Tis Hazari, Delhi.

6. The principal grievance of the appellant/husband is that his application preferred under Order VIII Rule 5 read with Order XII Rule 6 and Section 151 of the Code of Civil Procedure, 1908 [in short, "CPC"] has been rejected.

7. We may note that the impugned order also directs payment of interim maintenance, *qua* which the appellant/husband has raised no grievance in the instant appeal.

8. It is the appellant's/husband's case that the marriage took place on 21.04.2016. Mr Adarsh Varma, counsel who appears on behalf of the appellant/husband, says that the couple has been separated since 06.12.2017. It is also the case of the appellant/husband that on 16.11.2017 i.e. after the marriage had taken place, the appellant/husband discovered that the respondent/wife suffered from physical deformities which prevented her from conceiving.

9. According to Mr Varma, there is enough and more material available on record which the learned Principal Judge should have examined in support of the plea taken by the appellant/husband in the aforementioned application. In other words, this is a fit case in which a divorce decree on admission could have been passed.

10. Having examined the record, we find that the matter has reached the stage of evidence in the concerned Family Court. We are informed by Mr Varma that the learned Principal Judge has fixed 19.02.2024 as the date for recording evidence.



11. Given this position, we are of the view that it would be in the interest of the parties that the recordal of evidence takes place at the earliest, as the divorce petition is broadly pivoted on two grounds i.e., fraud and cruelty. In this regard, the appellant/husband has invoked the provisions of Sections 12(1)(c) and 13(1)(ia) of the Hindu Marriage Act, 1955.

12. Therefore, this appeal is disposed of with the following directions:

(i) The learned Principal Judge will ensure that the evidence is recorded on the date fixed i.e., 19.02.2024. If for any reason it is not possible to record evidence on that date, he will give a date proximate to the said date so that the complete recordal of evidence takes place within the next four (04) weeks.

(ii) After recording the evidence, the learned Principal Judge will hear the arguments of both parties and endeavor to pass the final judgment, on or before 31.05.2024.

13. The registry will dispatch a copy of this order to the concerned court *via* all permissible modes, including e-mail.

RAJIV SHAKDHER, J

AMIT BANSAL, J

JANUARY 12, 2024/tr