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

+ **CM(M) 2271/2024**

SINTHIYA

..... Petitioner

Through: Mr. Shashwat Bhardwaj, Adv. with
petitioner.

versus

UMESH KUMAR

..... Respondent

Through: Mr. Sunil Dalal, Sr. Adv. with Mr.
Gaurav Gaur, Ms. Manisha Saroha,
Mr. Nikhil Beniwal, Mr. Vikram
Singh Dalal and Mr. Navish Bhati,
Advs.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

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04.04.2024

CM APPL. 20050/2024—Exp.

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

CM(M) 2271/2024, CM APPL. 20049/2024—stay

3. The present petition under Article 227 of the Constitution of India has been filed impugning the order dated 27.03.2023 passed by the learned Judge, Family Court-02, West, Tis Hazari Courts, Delhi in HMA No. 1100/22 titled as “Umesh Kumar vs. Sinthiya” whereby on one hand, learned Trial Court transferred the case and on the other hand, allowed the application under Order XXVI Rule 4A read with Section 151 CPC moved



by the respondent. The petitioner herein is the respondent before the learned Trial Court.

4. After making some arguments, it is jointly submitted by the parties that the petition already stands transferred from the Court of learned Judge, Family Court-02, West, Tis Hazari Courts, Delhi to learned Judge, Family Court-01, West, Tis Hazari Courts, Delhi. However, learned counsel for the petitioner submits that apart from seeking transfer of the case, he is also aggrieved with respect to the passing of order on the application under Order XXVI Rule 4 CPC read with Section 151 CPC preferred by the respondent whereby the Local Commissioner has been appointed by the learned Judge, Family Court-02, West, Tis Hazari Courts, Delhi to record evidence of the parties.

5. Learned counsel for the respondent submits that a detailed reply was filed to the said application moved on behalf of the petitioner contesting the averments raised in the application, however the same have been brushed aside by learned Judge, Family Court-02, West, Tis Hazari Courts, Delhi and had passed the impugned order.

6. Learned counsel submits that evidence is yet to be recorded by the Local Commissioner as appointed by learned Judge, Family Court-02, West, Tis Hazari Courts, Delhi.

7. Learned counsel for the petitioner submits that he is willing to withdraw the present petition with liberty to file fresh application for recall of order before the learned Judge, Family Court-01, West, Tis Hazari Courts, Delhi raising same averments, which have been raised in the present petition.

8. Learned counsel for the petitioner further submits that in these



circumstances, recording of evidence by the Local Commissioner to be recorded on 08.04.2024 and thereafter, on day to day basis, may be stayed.

9. Having considered the submissions made, permission to withdraw is granted with liberty to file an appropriate application as per law before the learned Trial Court. In the said circumstances, recording of the evidence before Local Commissioner is deferred till the application for recall is decided by learned Judge, Family Court-01, West, Tis Hazari Courts, Delhi.

10. It is made clear that the petitioner herein shall move an application for recall of order dated 27.03.2023 within 10 days from today, with an advance copy to the opposite side.

11. Learned Judge, Family Court-01, West, Tis Hazari Courts, Delhi also to ensure that no unnecessary adjournments are granted for hearing and disposal of the said application.

12. Accordingly, the present petition along with the pending application is disposed of.

SHALINDER KAUR, J.

APRIL 04, 2024/ss