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

+ **MAT.APP.(F.C.) 269/2024 & CM APPL. 47559-47560/2024**

NARESH KUMAR YALLAAppellant

Through: Mr Suresh Prasad, Advocate.

versus

KOMALI PERNIRespondent

Through: Counsel for the respondent
(appearance not given)

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

20.08.2024

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

CM APPL. 47559/2024

1. Allowed, subject to just exceptions.

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2. This appeal is directed against the judgment and order dated 25.07.2024 passed by Ms Sukhvinder Kaur, learned Principal Judge, Family Court, Patiala House Courts, New Delhi.

3. *Via* the impugned judgment and order the learned Family Court Judge has dismissed the application preferred by the appellant/Naresh Kumar Yalla to seek review of an earlier order dated 31.05.2024 and for waiving cost imposed on him.

4. Concededly, *via* order dated 31.05.2024, despite the appellant resiling from a mediated settlement whereby, the parties had agreed to take recourse

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to the provisions of Section 13B of the Hindu Marriage Act, 1955 [in short “HMA”], i.e., to seek divorce *via* mutual consent- the Family Court granted one last and final opportunity to the appellant to file an affidavit-of-evidence, subject to payment of costs of Rs.8,000/-.

4.1 For this purpose, the Family Court Judge granted two (2) weeks to the appellant.

5. The application for review of the order dated 31.05.2024 was lodged in and about July 2024, that is, much after two (2) weeks had elapsed.

6. Significantly, the appellant has not placed on record the order dated 31.05.2024.

7. However, counsel for the respondent has placed before us a hard copy of the order dated 31.05.2024.

8. A perusal of the order shows that the appellant had, as indicated above, not only reneged on the settlement agreement arrived at under the aegis of the mediation centre, but had also made attempts to delay the trial.

9. It appears that after the settlement was arrived at, the appellant preferred an application under Section 151 of the Code of Civil Procedure [in short, “CPC”] seeking modification (s) in the settlement agreement dated 14.05.2024. The modifications sought were:

- i) The appellant would not withdraw other cases filed by him.
- ii) The appellant would be at liberty to file fresh cases against the respondent in the future.

9.1 This application was dismissed *via* the order dated 31.05.2024.

10. The record discloses that the appellant had previously filed an application under Order VIII Rule 9 [which was treated as an application



under Order XII Rule 6] of the CPC praying for a decree of divorce, *albeit*, without any other reliefs being granted in the divorce petition instituted by the respondent.

11. The appellant had also filed an application under Order VII Rule 11 of the CPC which was dismissed *via* the order dated 31.05.2024.

12. It also appears that the appellant had also approached the Supreme Court *via* Transfer Petitions 22673/2022 and 3090/2023, which were dismissed on 16.12.2022 and 02.01.2024 respectively.

13. It is not in dispute that the appellant's evidence has not been recorded since 23.08.2022. The order dated 31.05.2024 notes that the appellant **“is not appearing for adducing evidence and seeking adjournments on one pretext or the other”**.

14. We may also indicate that the appellant has joined proceedings through video conferencing

15. We have asked the appellant whether he was willing to dissolve the marriage based on mutual consent and if such a step is taken, the parties could proceed to withdraw the cases lodged against each other.

15.1 Furthermore, it was also indicated to the appellant that both sides could also agree not to trigger fresh cases against each other arising out of matrimonial discord presently obtaining between the parties.

16. The appellant, however, clearly, indicated that he was not agreeable to such a settlement being forged between the parties; an aspect which was also noticed by the Family Court in the order dated 31.05.2024.

17. For the foregoing reasons and the intractable approach of the appellant, we are not inclined to interfere with the impugned order.

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18. The appeal is, accordingly, dismissed.
19. For good order and record, the Registry will scan and upload the order dated 31.05.2024 so that it remains embedded in the case file.

RAJIV SHAKDHER, J

AMIT BANSAL, J

AUGUST 20, 2024/ds

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