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

+ **MAT.APP.(F.C.) 292/2024 & CM APPL. 51376-78/2024**

ASHOK ARORA

.....Appellant

Through: Mr Abhishek Gupta, Adv.

versus

DISHA @ DURGA

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

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04.09.2024

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

1. This appeal is directed against the judgment and decree dated 15.04.2024 passed by Mr Vinay Kumar Khanna, learned Principal Judge, Family Courts, West, Tis Hazari Courts, Delhi.
2. *Via* the impugned judgment, the Family Court has dismissed the petition filed by the appellant under Section 9 of the Hindu Marriage Act, 1955 [in short "HMA"].
3. The appellant, *via* the Section 9 petition, has sought restitution of conjugal rights.
4. A perusal of the record and the judgment would show that the Family Court has concluded that the appellant has not been able to bring on record circumstances which would demonstrate that the respondent withdrew from his company without reason.

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5. The circumstances due to which the Family Court concluded that the respondent withdrew from the company of the appellant are set out in paragraph 18 of the impugned judgment.

6. For convenience, paragraph 18 of the impugned judgment is extracted hereafter.

“18. In the present case, admittedly the charge sheet with relation to FIR lodged by [the] respondent against [the] petitioner & his family members under Section 323/498A/506 r/w 34 IPC is pending in the court of Ld. MM Mahila Court a petition under Section 12 DV Act apart from Section 125 Cr.PC before the Family Court, Panipat seeking maintenance due to refusal and neglect is also pending disposal. Admittedly, there is no findings by any court that the complaint filed by the respondent is false. There is a complaint DD No. 4B dated 12.10.2017 to the effect that petitioner-husband had thrown her (respondent) out of the house and had broken her mobile phone is on record apart from the FIR No. 165/21 in which respondent-husband had levelled allegations dated 12.07.2017 when she was thrown out of the home after beating her. Apart from other averments, consumption of the liquor and drug addict and that petitioner, his mother apart from two sister in law had attempted to kill her. This court is of the opinion that petitioner has not been able to discharge his onus and he in the circumstances, appears to be taking benefit of his own wrongs. As per Section 23 HMA, a case whether is defended or not, does not matter and court finds that petitioner has not been able to establish that respondent wife-has withdrawn from petitioner-husband's society without reasonable excuse. Therefore, court is satisfied that petition filed by the petitioner deserves to be dismissed. Hence, this issue no.1 is decided in favour of the respondent and against the petitioner.”

7. The proceedings referred to in paragraph 18 of the impugned judgment and order would demonstrate that the respondent did have serious grievances about the way she was treated by the appellant causing her,



allegedly, mental and physical harm. The accusations levelled by the respondent with regard to the way she was treated, if found to be true, gave her sufficient cause to withdraw from the company of the appellant. As noted by the Family Court, while cases lodged by the respondent have not concluded, the nature of the proceedings initiated by the respondent suggests that she had reasonable cause to withdraw from the company of the appellant.

8. Nothing has been shown by the counsel for the appellant to have us conclude otherwise.
9. We find no merit in the appeal. The appeal is accordingly dismissed.
10. Pending applications shall stand closed.

RAJIV SHAKDHER, J

AMIT BANSAL, J

SEPTEMBER 4, 2024

Ch

[Click here to check corrigendum, if any](#)