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IN THE HIGH COURT OF DELHI AT NEW DELHI

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MAT.APP.(F.C.) 433/2024 & CM APPL. 74989/2024-Ex

SHIKSHA KUMARI

.....Appellant

Through: Mr.Jitendra Bharti, Adv. with
appellant in person.

versus

SANTOSH KUMAR

.....Respondent

Through: Mr.Naushad Alam with Mr.Saurav
Kansal, Advs.
Respondent through V.C.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

20.12.2024

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1. The present appeal under Section 19 of the Family Courts Act,1984, seeks modification of judgment dated 21.11.2024 passed by the learned Family Court, South-West District, Dwarka Courts, New Delhi in HMA No.2805/2024.
2. Vide the impugned judgment, the learned Family Court while allowing the first motion preferred by the parties for divorce by mutual consent, has observed in para 9 thereof, that the parties will be at liberty to file the second motion for divorce on or after 18.08.2025 i.e. after one year from the date of their separation.
3. Learned counsel for the appellant as also learned counsel for the respondent, who appears on advance notice, submit that taking into account the peculiar facts of the present case and the young age of the



parties, it is a fit case where the parties ought to be permitted to seek waiver of the statutory period of 1 year.

4. After some arguments, learned counsel for the appellant, submits that the appellant would be satisfied if this Court were to dispose of the appeal by clarifying that it will be open for the parties to move an application seeking waiver of the mandatory period stipulated under Section 13 of the Hindu Marriage Act, 1955, before the learned Family Court at the time of filing of second motion with a direction to the learned Family Court to consider the said application on its own merits.
5. Having considered, the submissions of learned counsel for the parties, we are of the view that the impugned judgement prematurely curtails the right of the parties to move to the learned Family Court with a prayer seeking waiver of the statutory period at the time of moving the second motion. In our considered opinion, it was not open for the learned Family Court to hold at the time of deciding the first motion itself that no waiver qua the statutory period would be granted at the time of the second motion, which is yet to be moved by the parties. We, therefore, dispose of the appeal by making it clear that it will be open for the parties to move an appropriate application for waiver of the statutory period, which application, as and when moved will be considered by the learned Family Court on its own merits.



6. The appeal along with pending application stands disposed of.

REKHA PALLI, J

SAURABH BANERJEE, J

DECEMBER 20, 2024

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