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

+ **MAT.APP.(F.C.) 255/2025**

NEERAJ SEHGAL

.....Appellant

Through: Mr. Paritosh Singh Rajput and
Mr. Sanjay Kathuria,
Advocates.

versus

SEEMA SEHGAL

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN

SHANKAR

ORDER

% **07.08.2025**

CM APPL. 41499/2025 (Ex. from filing original document)

1. Allowed, subject to all just exceptions.
2. The Application shall stand disposed of.

MAT.APP.(F.C.) 255/2025, CM APPL. 41498/2025 (Stay) & CM APPL. 41500/2025 (Delay of 735 days in filing the appeal)

3. The present appeal under Section 19 of the Family Court Act, 1984 read with Section 151 of the Code of Civil Procedure, 1908 has been filed by the Appellant against the Judgment dated 31.05.2023 passed by the learned Principal Judge, Family Court, East District, Karkardooma Courts, Delhi in Civil Suit No. 1/2022.

4. Through this Appeal, the Appellant challenges the correctness of *ex-parte* decree passed by the Trial Court in respect of an amount of Rs. 90,000/-. The application filed by the Appellant to set aside the *ex-parte* decree was already dismissed on 07.04.2025. Learned counsel for the Appellant admits that the aforesaid Order has become final.



5. The Respondent, who is the wife of the Appellant, alleged that the Appellant stole her debit card and withdrew Rs. 90,000/- in a clandestine manner.

6. In support of her case, the Respondent produced the relevant documents and appeared as PW-1. Her testimony remained unchallenged due to lack of her cross examination by the counsel for Appellant. Consequently, her suit for recovery of Rs. 90,000/- was decreed.

7. The present Appeal has been filed along with an application seeking condonation of delay of 735 days in filing the Appeal.

8. Learned counsel for the Appellant has been heard in support of the memorandum of Appeal.

9. He submits that although the Appellant has already deposited the decretal amount, the Respondent failed to prove the documents, as they were not accompanied by the certificate under Section 65B of the Indian Evidence Act, 1872.

10. He further submits that the Respondent failed to prove that the Appellant had withdrawn the said amount.

11. He also contends that there is no evidence to prove that the Appellant stole the debit card, especially since the Police, in the FIR bearing No. 304/2018, have submitted a closure report.

12. We have considered the contentions of the parties. The learned Principal Judge, at paragraph nos. 5 & 5.1, which is extracted for convenience, has dealt with the various contentions, *inter alia*, the aspect of the evidence remaining uncontroverted and the fact that the Appellant, during the investigation has admitted to withdrawing the amount. Moreover, when documents were admitted in evidence, the Appellant failed to object on question of admissibility of documents.



“5. The testimony of the plaintiff (PW-1) remained unchallenged. I do not find any reason to disbelieve the unrebutted testimony of PW-1. Defendant has not led any evidence. From the testimony of plaintiff and the documents placed on record, it is established that plaintiff is the wife of the defendant and there is long history of litigation between the parties. As per unrebutted testimony of PW-1 she was thrown out of the matrimonial home and her debit card was misused by defendant (her husband) for withdrawing of Rs.90,000/- by different withdrawals on different dates. The withdrawal of amount from her account is proved from statement of account of the plaintiff Ex.PW1/H which reflects withdrawal of amount of Rs.15,000/- each on 11.09.2018, 12.09.2018, 13.09.2018, 14.09.2018, 15.09.2018 and 20.09.2018 by way or cash withdrawal from ATM.

5.1 The statement of PW-1 is also corroborated from the fact that she has lodged FIR against the defendant (her husband) Ex. PW1/G under Section 379 IPC for theft in respect of the said amounts. Document Ex. PW1/H is pertaining to the police report in case FIR no. 304/18 of PS. Krishna Nagar, Delhi. As per the report, present defendant was involved in the investigation of the case. As per defendant he used to deposit savings from his shop in the account of his wife which he had withdrawn in the absence of his wife without her consent. Document Ex. PW1/H indicate that as per police investigation defendant himself admitted that he has withdrawn the amount from the account of his wife without her consent. There is no document on record that defendant has any right to withdraw the amount from the account of his wife without her consent, particularly when matrimonial dispute was going on between the parties. In civil case, plaintiff is required to discharge his / her onus to prove in ‘balance of probability’. Keeping in view the unrebutted testimony of PW-1 and documents on record, plaintiff has discharged her onus and established in balance of probabilities that defendant / husband had misused her debit card without her consent to withdraw Rs.90,000/- from her account. In my view, plaintiff has been able to establish her case for recovery of Principal amount of Rs.90,000/- from the defendant.”

13. Accordingly, the present Appeal along with pending application(s) is dismissed.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

AUGUST 07, 2025/nd/kr/ia