



2025:DHC:2750-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 21.04.2025***

+ MAT.APP.(F.C.) 147/2025

RAHUL DASS

.....Appellant

Through: Dr. Ashwani Bhardwaj, Adv.

versus

ANAMIKA RASTOGI

.....Respondent

Through: Nemo.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****HON'BLE MS. JUSTICE RENU BHATNAGAR****NAVIN CHAWLA, J. (ORAL)****CM APPL. 22770/2025 (Exemption)**

1. Allowed, subject to all just exceptions.

CM APPL. 22771/2025

2. For the reasons stated in the application, the same is allowed and the delay of 15 days in filing the appeal is condoned.

3. The application stands disposed of.

CM APPL. 22772/2025

4. For the reasons stated in the application, the same is allowed and the delay of 10 days in re-filing the appeal is condoned.

5. The application stands disposed of.

MAT.APP.(F.C.) 147/20256. This appeal has been filed by the appellant, challenging the Order dated 17.01.2025 passed by the learned Additional Principal Judge, Family Court, South West District, Dwarka Court, New Delhi (hereinafter referred to as, 'Family Court') in HMA Petition No. 752/2024, titled *Rahul Dass v. Anamika Rastogi*, returning the



2025:DHC:2750-DB



divorce petition filed by the appellant herein under Order VII Rule 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as, 'CPC') with liberty to file the same before a Court having territorial jurisdiction.

7. It is the case of the appellant himself, that the marriage between the appellant and the respondent was solemnised on 22.10.2018 at Dehradun, Uttarakhand. It is further the case of the appellant that after the marriage, the parties started to reside at Janakpuri, Delhi before they left for Australia. They were also blessed with a child in Australia and stayed there together till the respondent finally left the appellant.

8. The appellant filed the above-mentioned divorce petition before the learned Family Court claiming that the parties to the marriage had last resided together at Janakpuri, Delhi, which falls within the jurisdiction of the said Family Court. The learned Family Court, however, has returned the divorce petition, observing therein that the stay at Janakpuri was of fleeting nature and cannot be considered as the ordinary place of residence of the parties; the appellant was an Australian citizen prior to his marriage and the parties after marriage had stayed in Australia. Therefore, it was observed by the learned Family Court that merely because the parties for some time had stayed at Janakpuri, Delhi, before leaving for Australia, would not make it their matrimonial home. The Impugned Order also records the submission of the learned counsel for the petitioner (appellant herein) that he would be filing the divorce petition at Dehradun, Uttarakhand, as the marriage of the parties was solemnized there.

9. The learned counsel for the appellant reiterates that the parties



after their marriage had resided at Janakpuri, Delhi, before moving to Australia and, whenever they come to India they reside at the said address. He submitted that, therefore, the parties would be treated as lastly residing at that address thereby vesting jurisdiction to the learned Family Court in terms of Section 19(iii) of the Hindu Marriage Act, 1955 (hereinafter referred to as, 'HMA'). He further submits that in terms of Section 1 of the HMA, it is the last place of residence in India that would be material for vesting jurisdiction in a court.

10. We are unable to agree with the above submissions of the learned counsel for the appellant.

11. It is the appellant's own case that the marriage between the parties was solemnized at Dehradun, Uttarakhand. The appellant was already residing at Australia. Before shifting to Australia, as per the case of the appellant, they had resided for a few days at Janakpuri, Delhi. The appellant further contends that whenever the parties used to visit India, they used to reside at that address. However, that would not make it a place where the "*parties to the marriage last resided together*", as required to vest jurisdiction in the Family Court at Delhi in terms of Section 19(iii) of the HMA. It is evident that the parties last resided together in Australia, where they were also blessed with a child. The respondent is also claimed to be staying at Dehradun.

12. We are, therefore, of the opinion that the learned Family Court has rightly exercised its jurisdiction under Order VII Rule 10 of the CPC in returning the divorce petition to be filed before a Court of competent jurisdiction.

