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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 04th October, 2023***+ **MAT.APP.(F.C.) 99/2022**

AKHILESH KUMAR DAS Appellant
Through: Mr. Rajiv Kr. Jha & Ms. Ananya Roy,
Advocates.
versus

RUPAM DAS Respondent
Through: Mr. Narender Pal Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. An appeal under Section 19(1) of the Family Courts Act, 1984 has been filed against the Order dated 31.05.2022 vide which the application of the appellant/ husband under Section 151 CPC seeking directions to the respondent/ wife to issue "No Objection Certificate" for having a child from a surrogate mother, was dismissed.
2. The appellant/ husband had filed a divorce petition on the grounds of cruelty under Section 13 (1)(ia) of the Hindu Marriage Act, 1955 in the year 2022. During the trial, he moved an application under Section 151 CPC wherein he submitted that he is already 54 years old and divorce proceeding shall take substantial time to be disposed of. With growing age he would become less capable to perform his duty as a father. He is left with no option but to have a child through surrogacy to carry forward his DNA line



and there is no chance of his becoming a father without the cooperation of the respondent/ wife. Therefore, a prayer was made to direct the respondent/ wife to issue a “No Objection Certificate” to the petitioner/ appellant to have a child through a surrogate mother.

3. The respondent had submitted that she had cooperated with the appellant for IVF, though it was disputed by the appellant. A similar application was also filed before this Court, but it never got listed. The learned Judge, Family Court observed that no provision has been mentioned in which the Court can grant the prayer made in the application and thereby dismissed the application.

4. **Aggrieved the appellant has filed the present application.**

5. The Surrogacy (Regulation) Act, 2021 (as amended in 2023) (herein after referred to as “*the Act*”) has been enacted for regulation of the practice and process of surrogacy and for the matters connected thereto.

6. **Section 2 (zd)** of the Act defines surrogacy as “*a practice whereby one woman bears and gives birth to a child for an intending couple with the intention of handing over such child to the **intending couple** after the birth*”.

7. Thus, as per the definition of surrogacy, the child is to be handed over to the “intending couple” by the woman. **Section 2 (h)** of the Act defines a ‘couple’ as “*the **legally married** Indian man and woman above the age of 21 years and 18 years respectively*”.

8. In the present case, the petitioner/ appellant is seeking divorce from his wife and it is difficult to comprehend his intending to have a child through surrogacy during the subsistence of marriage, as it may lead to unwarranted complications not only inter-se the couple but also the child.

9. Further, **Chapter 3** of the Act provides for “**Regulation of**



Surrogacy and Surrogacy Procedures” wherein **Section 4 (ii) (a)** states that a surrogacy procedure cannot be availed unless an intending couple has an medical indication necessitating gestational surrogacy, but on obtaining a **“Certificate of Recommendation”** from the Board on an application made by them, they may be allowed for surrogacy. There is, therefore, a complete Act which provides for a comprehensive procedure to be followed in case a person intends to have a child through surrogacy.

10. In the present case, the only ground on which the appellant had sought a child through surrogacy is that respondent/ wife is not forthcoming though it is a fact denied by her. The Divorce petition has been filed only in 2022 and his claim that he is now 54 years old and the divorce petition may take long, does not appeal to reason. He may seek expeditious disposal of his divorce petition. His application for child through surrogacy during the subsistence of marriage, has been rightly dismissed by the learned Judge, Family Court.

11. We find no merit in the appeal, whereby the appellant has sought a child through surrogacy without following the procedures as enacted in the Surrogacy (Regulation) Act, 2021, which is hereby dismissed.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 04, 2023

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