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

+ MAT.APP.(F.C.) 5/2014

KAWAL BAHADUR SINGH BATRA Appellant
Represented by: Mr.Hrishikesh Baruah, Adv.

versus

JAS KIRAN KAUR Respondent
Represented by: Ms.Malvika Rajkotia &
Mr.Ramakant Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER
10.08.2016

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CM No. 1311/2014

1. The instant application has been filed by the appellant with a prayer that operation of the impugned order dated October 17, 2011 passed in HMA Petition No.141/2011 may be stayed.
2. Vide order dated October 17, 2014 execution of warrant of arrest has been stayed subject to his depositing part payment.
3. Since we are disposing of the appeal today the application is dismissed as having become infructuous.

CM No. 12110/2015

1. This application has been filed by the respondent pointing out a non-compliance of the order dated October 17, 2014 and necessary direction to the appellant.
2. Since we are disposing of the appeal today the instant application is also dismissed as having become infructuous.

3. The applicant can seek execution.

MAT.APP.(F.C.) 5/2014

1. The petitioner is aggrieved by the order dated August 17, 2012 whereby while disposing of the application under Section 24 of the Hindu Marriage Act filed by the respondent Smt.Jas Kiran Kaur, wife of the petitioner, the learned Judge-01, South, Family Court, Saket passed the following order:-

“11. Admittedly, an agreement had taken place between the parties at Mediation Centre, Tis Hazari Courts, Delhi on 18.03.2009 whereby the petitioner had agreed to pay ₹50,000/- per month to the respondent and further agreed to bear all education expenses of both the children including school fees, transportation, books and stationery, uniform, tuitions etc. The petitioner has been adhering to the aforesaid terms of the agreement but since April, 2011, has failed to comply the terms and conditions of the aforesaid settlement for the reasons stated in his submissions.

12. Looking into the financial capacity of the petitioner alongwith family business being carried out by him alongwith other family members in Japan, his share in the property in Delhi and the life style as depicted in the pleadings, the petitioner is directed to comply the terms and conditions of the settlement agreement dated 18.03.2009. It would not be out of place to mention here that on the basis of the settlement dated 18.03.2009, the Hon'ble High Court of Delhi quashed the FIR registered under Section 498-A/406/34 IPC against the petitioner and his family members on 05.05.2009. After having availed the benefits of the agreement, now the petitioner cannot wriggle out of it. Since the respondent/wife remained gainfully employed with Mitsubishi company w.e.f. August, 2009 to May,

2011, therefore, she will not be entitled to any maintenance till May, 2011. However, both the children shall get ₹50,000/- per month towards maintenance from the petitioner from the date of the filing of the present application u/s 24 of H M Act i.e. 22.12.2010. The petitioner is directed to pay ₹50,000/- per month towards maintenance of respondent w.e.f. June, 2011. He shall also bear the educational expenses of both the children, as per the terms of the settlement deed dated 18.03.2009. The arrears of monthly maintenance be cleared within four months from today.”

2. Learned counsel for the appellant submits that the mediation settlement dated March 18, 2009 provided an interim ad-hoc arrangement in terms of maintenance i.e. ₹50,000/- per month for a period of two years which he had complied with. He complied with other conditions also like providing AC car, handing over the istridhan, jewellery etc. Despite that whenever he visited India he was not allowed even to meet his children. Compelled by the circumstances he filed the petition for dissolution of marriage on account of the cruelty committed by his wife.

3. In the divorce petition the respondent wife filed an application under Section 24 of the Hindu Marriage Act to seek maintenance which was resisted for the following reasons:-

- (i) Due to severe financial constraints on account of the slowdown of economy it was not possible for him to provide maintenance as well education expenses as contemplated under the settlement dated March 18, 2009.
- (ii) He had already parted with substantial amount i.e. more than ₹15,00,000/- for which no account has been rendered by the respondent.
- (iii) The appellant had been meeting his liability and responsibilities by

encashing his fixed deposits or taking loan against those FDRs and against his life insurance which now stands depleted.

(iv) The Family Court did not consider his plea that his wife was employed.

(v) His detailed affidavit giving comprehensive account of his personal financial assessment has not been considered by the Family Court to appreciate that his financial condition has changed dramatically after the settlement before the mediation.

4. During course of hearing attention of the learned counsel for the appellant was drawn to the assets owned by the family of the appellant as well the fact that maintenance to wife has been awarded only with effect from the date she ceases to be in employment.

5. Learned counsel for the appellant was also requested to address arguments on clause 7 of the settlement arrived at before the Mediator on March 18, 2009 which incorporates that the settlement agreement is applicable for next two years and shall be reviewed by both the parties depending upon the circumstances at that time. It is not the case of the appellant that by placing on record his deteriorated financial condition he filed another application for review of the maintenance amount mentioned in para 1 of the settlement.

6. As per the mediation settlement, the appellant agreed to pay a sum of ₹50,000/- per month to the respondent before 7th of every English calendar month starting from April, 2009 and in case of default to pay an additional amount of ₹5000/-. The appellant also agreed to bear all the educational expenses of their children. He agreed to provide a small/medium AC car not more than two years old to the complainant but towards fuel expenses no separate payment was to be made.

7. In terms of the settlement the complainant was to withdraw the pending litigation which she has complied with.

8. While awarding maintenance learned Judge, Family Court has noted the age of the two children i.e. daughter Ankita aged about 11 years and Master Tejbir aged 8 years at the time of passing impugned order. The parties got married on November 17, 1996 and it was an arranged marriage. The appellant is a shareholder and Manager in the joint family business in Japan. In the year 2012 he was receiving ₹1.75 lacs per month as **pocket money**. Apart from that the appellant/family of the appellant owned immovable property consisting of one flat of four bedrooms at C-22, Green Park Extension; one farm house of approximately 30,000 sq.fts. at Classic Gold Resort, Haryana and two shops in Aashirwad Apartment, Green Park.

9. Learned Judge, Family Court following the guidelines laid down in 140(2007) DLT 16 Bharat Hegde Vs. Saroj Hegde observed that wife/children are entitled to enjoy similar status which they would have enjoyed while living with the appellant. While considering that respondent/wife had remained gainfully employed with Mitsubishi Company with effect from August, 2009 to May, 2011 and maintaining the maintenance of ₹50,000/- to the children which had already been agreed in the settlement before the Mediator, awarded ₹50,000/- as maintenance to the wife with effect from June, 2011.

10. The marriage of the appellant with the respondent being an arranged marriage and the appellant being shareholders in the family business being run in Japan with number of immovable properties in posh areas, the amount of ₹50,000/- towards maintenance of two grown up children apart from educational expenses and ₹50,000/- to the wife per month cannot by any stretch of imagination be termed as exorbitant.

11. We find no illegality or perversity in the impugned order dated August 17, 2012.

12. The appellant has also challenged the order dated October 17, 2013 which does not call for any interference by this Court for the reason that on that date hearing of the review application was deferred till the arrears of maintenance are deposited by him.

13. The appeal is dismissed.

PRADEEP NANDRAJOG, J.

PRATIBHA RANI, J.

AUGUST 10, 2016/ 'pg'