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

+ MAT.APP. (F.C.) 12/2014, CM APPL.2056/2014 & 1805/2016

SIDDHARTH SHARMA Appellant

Through: Mr. Arvind K. Mudgal, Advocate.

versus

SHALU SHARMA Respondent

Through: Mr. Aman Mehta, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

03.08.2016

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In this appeal, the order of the Family Court fixing the *pendente lite* maintenance @ ₹30,000/- has been challenged by the husband. It is contended that the Family Court did not address itself or nor did it apply its mind objectively to the material on the record while arriving at the findings as to why such amount was appropriate given that the husband had contended that he was not possessed of means of livelihood in excess of ₹35,000/- per month.

Counsel for the respondents, on the other hand, urged that this Court should not interfere with the determination of the Family Court. It was pointed out in the grounds of appeal that the determination made by the Court under Section 125/127 of Cr.P.C. fixing maintenance @ ₹20,000/- per month had attained finality and that the Family Court had not considered this. It was urged on behalf of the

wife that the Family Court was shown sufficient documentary evidence in support of the allegations that the husband's income was in excess of ₹35,000/-. Learned counsel relied upon the copies of passport to emphasise that the husband had been travelling even after the impugned order was made; copies of the bank account statements were also relied upon.

The impugned order firstly took into account the fact that the husband had admitted his liability to pay ₹10,000/- per month as maintenance and volunteered to do so. In the circumstances, the Family Court concluded that the husband's plea that he was earning about ₹22,000/- per month was untrustworthy. It thereafter deduced - on the basis of an application made by the appellant for visa for travelling to Switzerland on vacation, that having regard to that fact and the lavish lifestyle that the appellant was habituated to, he was possessed of far greater means than he was willing to admit. On the basis of this reasoning, the Family Court directed maintenance of ₹30,000/-.

This Court is of the opinion that whilst the Family Court's order on the quantum might arguably be correct, what impressed the learned Judge to conclude that the said amount was the most appropriate - given that the Court had fixed the quantum at ₹20,000/- under Section 125, has not been disclosed. The least that was expected by the Family Court in proceedings under Section 24 of the Hindu Marriage Act, 1955 was to discuss what was the nature of the evidence which persuaded it to hold that appropriate amount was not ₹20,000/- but ₹30,000/- .

At the time when this appeal was entertained, i.e., on 31.01.2014, the appellant was directed to pay to the respondent wife ₹20,000/- per month (in turn dependent on the order of 5.2.2011).

In the light of the above discussion, the matter is remitted to the Family Court to decide whether the amount of ₹30,000/- as maintenance is justifiable having regard to the materials before it and such other materials that may be brought on record by the parties. Both parties, i.e., the appellant husband and the wife shall file affidavits disclosing the means of their livelihood. At the same time, it is clarified that the husband's liability to pay ₹20,000/- per month is in no manner disturbed and shall continue to bind him till the disposal of the matter by the Family Court upon this remand. The Family Court shall endeavour to complete the proceedings and render the judgment within three months from today in all the pending execution proceedings. The Family Court shall also decide, by the same order, the outstanding amount or amounts which are payable by the husband on the basis of the maintenance fixed @ ₹20,000/- per month. Parties are directed to appear before the Family Court on 10.08.2016.

The appeal is partly allowed in the above terms.

Order dasti.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

AUGUST 03, 2016

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