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

+ MAT.APP.(F.C.) 112/2016

ADARSH KUMAR

..... Appellant

Represented by: Mr.N.S.Bhat, Advocate with
Mr.Jitendra Kumar, Advocate

versus

GEETA

..... Respondent

Represented by: Respondent in person

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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30.09.2016

CM No.29641/2016

For the reasons stated in the application delay of 69 days in filing the appeal is condoned.

The application is disposed of.

Mat.App.(F.C.) No.112/2016

1. The impugned order is fairly confusing and regretfully does not bring out the true entitlement of the respondent as to the amounts payable by the appellant to the respondent.
2. The impugned order records that vide order dated July 25, 2013 the predecessor Court had granted maintenance in sum of ₹3,000/- per month to the respondent under Section 24 of the Hindu Marriage Act.
3. Prayer made for maintenance to be granted for the minor son Sarthak who was being maintained by the wife, as also for payment of litigation

expenses has been noted by the impugned order as requiring a decision.

4. The learned Judge has noted thereafter that the respondent had filed a petition under Section 125 Cr.P.C. wherein an interim maintenance was granted to the son, but the petition was ultimately dismissed. The learned Judge then proceeds to note whether any maintenance has been granted to the son and concludes in paragraph 15 that the minor son would be entitled to ₹3,000/- per month. The confusion arises when in the 21st paragraph of the order the learned Judge notes that the respondent is not entitled to ₹6,000/- per month followed by the direction that the respondent would be entitled to only ₹3,000/- per month.

5. The minor son being with the wife, the amount payable for maintaining the son would be to the wife.

6. Concededly while passing the order dated July 25, 2013 and deciding application filed by the respondent under Section 24 of the Hindu Marriage Act, 1955 the learned Presiding Judge of the Family Court took note of the fact that in proceedings under Section 125 Cr.P.C. the learned Metropolitan Magistrate had directed appellant to pay interim maintenance in sum of ₹3,000/- to the minor son pending recording of evidence to determine whether the wife was also earning. The learned Judge Family Court which passed the order on July 25, 2013 found that the wife was not earning anything and therefore keeping in view that ₹3,000/- per month had been fixed by the interim maintenance order for the son granted ₹3,000/- per month as maintenance to the wife.

7. While passing the impugned order the learned Judge Family Court overlooked the fact that due to counsel for the respondent not diligently prosecuting the petition filed by her under Section 125 Cr.P.C. the same was dismissed for non-prosecution and the result was the appellant stopped

paying ₹3,000/- per month to the respondent for the maintenance of the son.

8. Since in judicial orders which have attained finality, albeit in different proceedings, ₹3,000/- per month as maintenance for the son and similar sum for the wife have been fixed, the impugned order correctly records at the first instance that the appellant has to pay to the wife ₹6,000/- per month but then confuses itself subsequently by saying that the respondent is not entitled to receive ₹6,000/- per month.

9. We dispose of the appeal clarifying that the liability of the appellant to pay to his wife would be ₹6,000/- per month and which would be for the maintenance of the respondent and the minor son.

10. As regards the contention that the appellant is not earning ₹15,000/- per month, suffice it to record that said monthly income of the appellant was with reference to the salary he was receiving as a Head Cashier with Big Bazaar. His claim that he resigned the job and is now working as a Driver remains a mere claim without any proof. The appellant has no proof of the respondent having any income.

11. Keeping in view appellant's income to be ₹15,000/- per month, ₹6,000/- per month as maintenance to the minor son and wife is reasonable.

12. The appeal is dismissed.

CM No.29640/2016

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

PRATIBHA RANI, J.

SEPTEMBER 30, 2016/mamta