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

+ MAT.APP.(F.C.) 9/2016 & CM Nos. 1863, 1865/2016

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Date of decision : 22nd April, 2016

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..... Appellant

Through: Mr. R.S. Juneja and
Mr. Yogesh Kr. Rana, Adv.
with appellant

versus

RAJNI

..... Respondent

Through: Mr. R.P.S. Bhatti, Adv. with
respondent

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT (ORAL)

Gita Mittal, J

1. We have heard learned counsel for the parties.
2. The parties were married on 27th November, 2010 and from their marriage, they were blessed with a daughter on 20th October, 2011. According to the appellant, on 20th September, 2012, the respondent left the matrimonial home with the daughter accompanying her brother under the pretext of having to attend a function at the parental home. She never returned thereafter. The appellant filed a petition under Section 13(1)(ia) of the Hindu

Marriage Act on 24th March, 2014 praying for dissolution of the marriage of the parties for a decree of divorce. On 12th August, 2014, the respondent filed an application under Section 24 and 26 of the Hindu Marriage Act praying for grant of interim maintenance to the respondent and her daughter. Adjudication in this application was delayed. Therefore, by the impugned order dated 16th September, 2015, the Family Court directed the appellant to pay a sum of Rs.1 lakh to the respondent as an interim measure without prejudice to his rights and contentions.

3. When the present appeal was listed before us on 19th January, 2016, we had granted interim stay of the direction for payment of the amount in the impugned order dated 16th September, 2015 subject to the appellant paying an amount of ₹12,000/- per month to the respondent as maintenance with effect from 1st January, 2016 as well as litigation expenses of ₹11,000/-. We are informed that the litigation expenses have been paid. The appellant is also paying the interim maintenance fixed by us.

4. We may note that the Family Court has noted that the appellant is working as a safai karamchari in East MCD drawing a salary of ₹26,428/-.

5. We are further apprised today that the family of the appellant consists of his mother and one unmarried sister. The appellant's mother is working in a corporation school as a safai karamchari. In as much as the appellant is living in a joint family with her, it is obvious that her income would require to be considered as part of the family earnings and would be considered while directing

payment of maintenance to the respondent. (Ref: ***Renu Jain v. Mahabir Prasad Jain*** (AIR 1987 Delhi 43))

6. It is also well settled that maintenance under Section 24 and 26 of the Hindu Marriage Act, 1955 would be payable by the appellant with effect from the date of the application which is 12th August, 2014. In view of the above facts and circumstances, we do not find the direction by the family court also to pay the sum of Rs.1 lakh as an ad hoc amount is unreasonable.

7. However, in the interests of justice, we are of the view that the appellant deserves to be permitted to pay the said amount in instalments.

In view of the above, this appeal is disposed of with the following directions :-

- (i) The appellant is permitted to pay the sum of `1 lakh in terms of the order dated 16th September, 2015 to the respondent in twenty equated instalments commencing from 15th April, 2016.
- (ii) The appellant shall continue to pay interim maintenance to the respondent in terms of our order dated 19th January, 2016 till the amount is varied or modified by the learned Single Judge till decision in the application under Section 24 and 26 of the Hindu Marriage Act which is stated to be pending before the Family Court.
- (iii) It shall be open for the Family Court to pass any order uninfluenced by the order in which maintenance fixed

by us on 19th January, 2016. The Family Court shall also direct appropriate adjustment of the amounts which are paid by the appellant in terms of the order dated 16th September, 2015 as well as the orders passed by us.

This appeal is disposed of in the above terms.

CM No.1865/2016

Heard.

For the reasons stated, the delay is condoned. This application is allowed in the above terms.

CM No.1863/2016

In view of the disposal of the appeal, this application does not survive for adjudication and is hereby disposed of.

Dasti to parties.

GITA MITTAL, J

I.S.MEHTA, J

APRIL 22, 2016/kr