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

+ MAT.APP.(F.C.) 31/2017 and CM APPL. 7082-7083/2017

SHIV MOHAN YADAV Appellant

Through: Mr Gunjan Kumar, Adv. along with the
appellant in person.

versus

ARCHANA YADAV Respondent

Through: Mr S.P. Chauhan and Mr Y.R. Sharma,
Advs

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **30.08.2017**

1. The appellant is aggrieved by a consent order dated 03.02.2016 passed by the learned Family Court disposing of an application filed by the respondent/wife under Section 24 of HMA whereunder the parties had mutually agreed on the quantum of maintenance which the appellant would pay to the respondent/wife and the minor child @ Rs.9000/- per month with effect from 17.07.2015. The appellant had also agreed to clear the arrears within six months from the date of passing of the said order and both the parties had agreed that in the event the dispute between them is not settled within one year from the date of passing of the order, the appellant shall increase the maintenance @ 7% with effect from 03.02.2017, and at the same rate on the amount payable on 03.02.2017, for each subsequent year. The record reveals that the statement of both the parties were separately recorded by the Family Court and they were duly represented by
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their respective counsels.

2. The appellant is also aggrieved by an order dated 17.11.2016, passed by the learned Family Court dismissing his application for seeking modification of the order dated 03.02.2016. Learned counsel for the appellant submits that the ground for seeking modification of the consent order dated 03.02.2016 is that the appellant was sacked from his job on 30.04.2016 and has remained jobless ever since and therefore, not in a position to pay the maintenance to the respondent/wife and the minor child in terms of the consent order. Learned counsel submits that the appellant has no other source of income and is dependent on his friends and relatives for his expenses and due to his minimal education, he has not been able to find a new job.

3. We may note that the averments made by the appellant in his application for seeking modification of the order dated 03.02.2016 is not supported by any document to establish that his services were actually terminated with effect from 30.04.2016 though learned counsel for the appellant has drawn out attention to the document filed by him with his appeal paper book (as Annexure A-3). Having perused the said document, we have enquired from the learned counsel at what stage was this document was placed before the Family Court. He is unable to assist us on this aspect.

4. The order dated 03.02.2016 being a consent order, is not disputed by learned counsel for the appellant. His only grievance is that the subsequent application for modification of the consent order on the ground that the appellant is virtually jobless, has not been considered.

5. The record reveals that on 03.02.2016, before the statement of both the parties was recorded by the Family Court initially, the Court had

examined the bank account statement of the appellant, maintained with Syndicate Bank and with SBI, Badli for the period between 2012-15 and 2013-16 respectively which had revealed that large sums of cash deposits had been made in the Syndicate Bank account between January, 2012 to January, 2013. It was also noted that the statement of the corresponding period between January, 2012 to January, 2013 in respect of the SBI Bank account was withheld by the appellant. At that stage, learned counsel for the appellant had sought a passover for him to furnish the bank statement of his account maintained with SBI, Badli for the relevant period and the said request was acceded to. It was only thereafter that the parties had appeared again before the Family Court at 3.00 PM and arguments on the application were addressed. It was in the course of the said arguments that the appellant had offered to pay maintenance at the rate of Rs.9000/- per month and said offer was accepted by the respondent/wife and thereafter the statement of both the appellant and the respondent was recorded. The consent to enhancement of the maintenance also finds mention in the statement of the appellant as recorded by the Family Court on 03.02.2016.

6. At this stage, learned counsel for the respondent states that although there is no stay order operating in favour of the appellant, he has not been paying the maintenance to the respondent at the agreed rate of Rs.9000/- per month along with the enhanced rate as agreed with effect from 03.02.2016 and from 03.02.2017 onwards. He submits that as on date, arrears have mounted to Rs.1,80,000/- approximately.

7. Learned counsel for the appellant states that in the petition filed by the respondent under Section 125 Cr.P.C, which is pending in a Competent Court at Mainpuri, Uttar Pradesh, the respondent/wife and the child have been granted interim maintenance @ Rs.4000/- per month which he has

been regularly paying and due adjustment of the said amount may be directed to be given to the appellant while calculating the maintenance @ Rs.9000/- per month.

8. All the payments that have been made out by the appellant to the respondent towards maintenance, shall be given due adjustment at the time of calculating the arrears. However, given the above facts and circumstances, we are not inclined to interfere with the impugned order dated 17.11.2016 whereby the appellant's application for modification of the consent order dated 03.02.2016 came to be dismissed. Both the orders are upheld.

9. The appeal is dismissed along with the pending applications.

HIMA KOHLI, J

DEEPA SHARMA, J

AUGUST 30, 2017
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