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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **MAT.APP.(F.C.) 80/2017 & CMs 17664-65/2017**
NAVEEN KUMAR DALAL Appellant
Through : Mr. Mukesh M. Goel and
Mr. Gaurav Kocchar, Advocates.
versus

NEELAM KADYAN Respondent
Through: None.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER
% **09.05.2017**

1. The present appeal has been filed by the appellant, assailing an order dated 09.3.2017, passed by the learned Family Court, Patiala House Court, New Delhi directing him to pay a sum of Rs.28,000/- per month for his two children towards *pendente lite* maintenance, from the date of filing of the application by the respondent/wife, i.e., with effect from 03.10.2003. The said amount has been directed to be paid on or before the 10th day of each month commencing from April, 2017, till the disposal of the pending petition. The appellant has been directed to clear the arrears in six equal monthly instalments, with the first instalment being payable by 15.4.2017.
2. We have inquired from learned counsel for the appellant if any amount, as directed or otherwise, has been paid by the appellant to the respondent in terms of the order dated 09.3.2017. Learned counsel concedes that after 9.3.2017, no amount has been paid to the respondent towards *pendente lite* maintenance of his children.
3. Learned counsel seeks to assail the impugned order on the ground that

while fixing the *pendente lite* maintenance of the children, the Family Court has not taken into consideration, the affidavit of the respondent.

4. It may be noted that the elder daughter of the parties is in class IX and the younger daughter is in Class IV and both of them are staying with their mother/the respondent at Rohtak, Haryana, where she is working as an Assistant Professor with Maharishi Dayanand University. Though the respondent had claimed maintenance for herself and the children, the said request was turned down by the learned Family Court and the order of maintenance was confined only to the children. Keeping in mind the expenses that are being incurred by the respondent towards the school fee, stationery, sports activities, summer camps and other ancillary expenses of the children, the learned Family Court has fixed the maintenance @ Rs.14,000/- per month for each child.

5. The contention that the appellant who is a practicing Advocate that he is not financially sound and therefore unable to pay a sum of Rs.28,000/- per month towards the *pendente lite* maintenance of the children, is sought to be ratified by learned counsel by relying upon the statement of the bank account of the appellant.

6. No doubt, the bank statement reflects the proof of making deposits and withdrawal of amounts from the account, but the said document cannot be considered in isolation or taken to be the sole yardstick for assessing the income of the appellant. Nor can the Bank statement reflect the correct picture of the financial status of the appellant. It may be noted that the appellant is a practicing Advocate with 20 years experience at the Bar. It is also not unknown that the entire professional fee of an Advocate is not received through cheque alone. Depending upon the nature of clientele,

there is also some cash element involved which may not have been deposited by the appellant. We therefore have reservations in accepting the statement made by learned counsel for the appellant that it must be assumed that the appellant has been depositing his entire professional fee, whether received in cheque or in cash, in his bank account and that is the final word in so far as assessing his income is concerned.

7. No other evidence has been pointed out by learned counsel for the appellant to substantiate his contention that while fixing the maintenance, the learned Family Court overlooked some material documents and therefore the maintenance awarded, is excessive or unreasonable and liable to be scaled down. On the basis of preponderance of probabilities, the learned Family Court has arrived at the figure of Rs.14,000/- as *pendente lite* maintenance payable for each child, looking at their age, stage of education, family background etc., which is found to be reasonable. It is also not as if the entire burden has been shifted on the shoulders of the appellant. The respondent is also contributing financially towards bringing up the children. We therefore do not see any justification for interfering in the impugned order.

8. Accordingly, the present appeal is dismissed in *limine* being devoid of merits, along with the pending applications.

HIMA KOHLI, J

SANGITA DHINGRA SEHGAL, J

MAY 09, 2017/ap/mk