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

+ **MAT.APP.(F.C.) 94/2017 & CM 19861/2017 (stay)**

SANJEET SINGH

..... Appellant

Through : Mr. Neeraj Yadav with
Mr. Deepak Yadav, Advocates with
appellant in person.

versus

ANUPAMA

..... Respondent

Through : Mr. Ravjyot Singh, Advocate with
respondent in person.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

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26.05.2017

1. Pursuant to the order dated 24.5.2017, the appellant is present on issuance of production warrants served on him through the Superintendent Jail.
2. Learned counsel for the appellant states that vide order dated 28.2.2017 passed by the learned Family Court (North), Rohini Court, Delhi in Ex.No.25/16 filed by the respondent/wife against the appellant/husband, taking note of the fact that the appellant/Judgment Debtor (**JD**) had not paid the arrears of maintenance to the respondent/Decree Holder (**DH**) that had mounted to a sum of Rs.3.50 lacs as on 31.8.2016, in terms of the order dated 31.8.2016 passed in HMA No.21/15, he was directed to be taken into

custody and sent to civil imprisonment till 17.3.2017. The said order was duly executed and the appellant/JD was taken into custody on 28.2.2017. The next date fixed in the execution proceedings was 17.3.2017. On the said date, the appellant/JD was produced before the Family Court from judicial custody and was directed to remain in custody till 31.3.2017.

3. On 31.3.2017, on an application filed by the respondent/DH under Section 24 of the Hindu Marriage Act, 1955, the learned Family Court had recorded that the appellant/JD had still not made any payment and therefore, he was sent back to judicial custody till 20.4.2017. On 20.4.2017, production warrants were issued for the production of the appellant/JD on 2.5.2017. On 2.5.2017, noting the fact that the appellant/JD had failed to make any payment to the respondent/DH towards the maintenance, he was sent back to judicial custody till 15.5.2017. Finally, on 15.5.2017, again recording that no payment had been made by the appellant/JD to the respondent/DH, he was directed to remain in custody till 31.5.2017.

4. Learned counsel for the appellant submits that Section 58 of the CPC contemplates that every person detained in civil prison in execution of a decree shall not be detained for a period exceeding three months and in the present case, the period of three months reckoned from 28.2.2018, shall expire on 28.5.2017. He therefore states that the learned Family Court could not have directed that the appellant/JD should continue to remain in judicial custody after 28.5.2017 and it is in this background that the present appeal has been filed.

5. Though several other pleas have been taken in the present appeal to assail the order dated 28.2.2017, the relief in the present appeal is confined to the grievance that the appellant/JD ought to be discharged from judicial

custody on or before 28.5.2017, by which date he had have remained in civil imprisonment for ninety days.

6. Learned counsel for the respondent/DH states that the appellant/JD has used every tactic under the sun to evade payment of the arrears of maintenance to his client to the point that he resigned from his job in the year 2013 and in the judgment dated 31.8.2016 passed in the petition for restitution of conjugal rights filed by the respondent/DH, the learned Family Court had passed adverse comments against him by noting that it is unacceptable that he would have stopped working as he is neither mentally nor physically incapacitated.

7. We have enquired from the appellant as to whether he can arrange some funds from his near and dear ones to atleast partly discharge the decree, but he flatly refuses to do so and states that his family members are unwilling to extend any loan to him for making payment to the respondent/DH.

8. It is stated by learned counsel for the respondent/DH that the claim of the appellant/JD that he is not residing with his family and they are not supporting him is only a ruse to evade making payment of the decretal amount to the respondent, which submission is however disputed by the counsel for the appellant.

9. Having regard to the fact that the execution petition is pending and is listed on 31.5.2017, the impugned order dated 15.5.2017 is modified to the extent that the appellant shall be discharged from civil imprisonment on 28.5.2017 and he shall present himself before the Executing Court on 31.5.2017 and on all future dates as may be directed.

10. The appeal is disposed of, along with the pending application.

A copy of this order shall be dispatched directly to the Superintendent Jail for perusal and compliance.

HIMA KOHLI, J

SANGITA DHINGRA SEHGAL, J

MAY 26, 2017
sk/ap/rkb