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

+ **MAT.APP.(F.C.) 164/2017, C.M. Nos. 33495-97/2017**

NEELAM KADYAN

..... Appellant

Through: Mr. Ashutosh Dubey, Advocate.

versus

NAVEEN DALAL

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% 25.09.2017

1. The appellant/wife is aggrieved by the order dated 09.3.2017, passed by the learned Family Court disposing of her application filed under Section 24 of the Hindu Marriage Act, 1955 (in short '**the Act**'), praying *inter alia* for grant of maintenance @ of Rs.60,000/- per month, for herself and the two minor children.

2. Under the impugned order, the learned Family Court refused to grant maintenance to the appellant in view of the fact that she is working as an Assistant Professor (Law) at the Rohtak University and her gross monthly income is to the tune of Rs.80,000/-. However, two minor children of the parties, a daughter aged about 16 years and a son aged about 10 years, have been granted *pendente lite* maintenance @ Rs.28,000/- per month, payable from the date of filing of the application, i.e., w.e.f. 03.10.2013. The respondent/husband has been directed to clear the arrears of maintenance in six equal monthly instalments, the first instalment payable by 15.4.2017. He

has further been directed to pay the remaining five instalments of maintenance on or before 15th day of each calendar month, commencing from June, 2017. The respondent has also directed to pay litigation expenses of Rs.20,000/- to the appellant/wife.

3. We may note that prior to the appellant approaching this Court by filing the present appeal, aggrieved by the very same order, the respondent/husband had filed an appeal, registered as MAT. APP. (F.C.)No. 80/2017, which was dismissed by the Division Bench (of which one of us, Hima Kohli, J. was a member) on 09.5.2017, at the stage of admission, by rejecting the plea of the counsel for the respondent/husband (appellant therein) that his client was not financially sound and unable to pay a sum for Rs.28,000/- per month towards *pendente lite* maintenance of the children.

4. It was held in the order dated 09.05.2017 that mere reliance on the bank statement of the husband cannot be considered the sole yardstick for assessing his income, particularly, since he is a practising Advocate with 20 years of experience at the Bar and 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 husband. Further, it was pointed out that no other evidence has been placed on record which could substantiate the claim of the husband that while fixing the maintenance of the children, the learned Family Court had overlooked some material documents or that the maintenance awarded was excessive or unreasonable and liable to be scaled down. On the basis of preponderance of probabilities, learned Family Court had arrived at the figure of @ Rs.14,000/- p.m. payable as *pendente lite* maintenance in respect of each child, looking at

their age, stage of education, and family background, etc., which was found to be reasonable. It was also noted that the wife is also contributing financially towards rearing the children and the entire burden has not been shifted on to the shoulders of the husband. As a result, the said appeal was dismissed.

5. Aggrieved by the aforesaid decision, the respondent had filed an appeal before the Supreme Court, registered as SLP No. 19486/2017, which was dismissed in *limine*, vide order dated 08.8.2017. A copy of the said order has been handed over by learned counsel for the appellant and is taken on record.

6. Now the appellant/wife has challenged the very same order dated 09.5.2017. On the last date of hearing, we had enquired from learned counsel for the appellant that in view of the findings returned in the order dated 09.5.2017 passed in MAT APP (F.C.) No. 80/2017, holding that the impugned order, fixing *pendente lite* maintenance in respect of both the children appears to be reasonable, which order was upheld by the Supreme Court, would the appellant still be inclined to press the present appeal. Learned counsel had sought time to obtain instructions from his client. Today, he states that he has instructions to press the present appeal on merits.

7. Learned counsel for the appellant assails the impugned order by submitting that the learned Family Court has noted the expenses incurred by the wife in respect of the minor children, as in the year 2013, when the application under Section 24 of the Act was filed but not thereafter. He states that a subsequent affidavit filed by the appellant in May, 2014 (Annexure A-7 at Page 130-161), has not been considered.

8. On a perusal of the said affidavit, it transpires that the appellant has herself stated in Part III, clause 3 that the monthly expenditure incurred on the education of the children is Rs.47,777/-. A break-up of the said expenditure was also furnished by the appellant at page 144. One of the expenses referred to in the said statement is of the daughter undergoing PMT coaching, for which the appellant claims to have incurred Rs.1,25,000/-, on an annual basis (Rs.10,416/- per month). Pertinently, in the year 2013, the appellant's daughter was all of 13 years of age. On the date of filing the affidavit in the year 2014, she was aged about 14 years. Learned counsel has not been able to point out the nature of coaching that a 14 years old student was expected to undergo for taking the P.M.T.

9. A latest affidavit of expenses stated to have been filed by the appellant before the Family Court in the year 2015 (Annexure A-8), again refers to the daughter's PMT coaching costing Rs.1,25,000/- p.a., with a note appended along side that she is planning to join the same. In other words, the appellant's daughter has yet to join PMT Coaching classes but a claim has been made in anticipation of the expenses likely to be incurred by the appellant on her coaching, to the tune of Rs.1,25,000/- per year. Similarly, the appellant has claimed a sum of Rs.60,000/- p.a. from the respondent as expenses incurred towards "*Activity classes (dance and piano)*" in respect of her daughter, with a note that she plans to join the classes but she has not joined so far. The appellant also claims to have incurred a sum of Rs.60,000/- per year towards her son's tennis coaching classes, without enclosing any receipt in support of the same. Furthermore, though the appellant is entitled for reimbursement of medical expenses in respect of both her dependent children, from her employer, she has

mentioned that a sum of Rs.12,000/- per month is incurred by her on their medical expenses. It is apparent from the above that the statement of account filed by the appellant, has been unreasonably inflated and it is not supported by relevant receipts.

10. Given the aforesaid facts and circumstances, we are of the firm view that the impugned order does not suffer from any infirmity. It has already been indicated above that the very same order was challenged by the respondent/husband in an appeal and his pleas were turned down by holding that the amount of maintenance awarded for each child was after taking into consideration their age, stage of education and family background etc. The same reasoning holds true for the appellant herein. Accordingly, we declined to entertain the present appeal, which is dismissed in *limine* along with the pending applications.

HIMA KOHLI, J

DEEPA SHARMA, J

SEPTEMBER 25, 2017

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