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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 891/2017**

HARENDER SINGH BISHT Petitioner
Through: Mr. Virendra Rawat and Mr. Kamal
Kapoor, Advs.

Versus

YACHNA PANWAR Respondent
Through: Mr. Surinder Singh Barwal, Adv.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

ORDER
% **27.09.2018**

By the order dated 23.01.2017, which has been impugned in this petition under Section 482 Cr.P.C., Appellate Court has directed the petitioner (appellant) to deposit complete amount of arrears of maintenance as condition before hearing the appeal in view of the law laid down in *Rajiv Prejna Vs. Sarika* 159 (2009) DLT 616.

Learned counsel for the petitioner has placed reliance on *Brijesh Kumar Gupta Vs. Shikha Gupta & Anr.* 2015 Law Suit (Del) 552 wherein, it has been held as under :-

[5] After having heard both the sides and on perusal of the impugned order, material on record and the decisions cited, I find that there cannot be an absolute rider that the entire maintenance amount, as granted by the trial court, should be

deposited prior to hearing of the statutory appeal because it would otherwise leave the remedy of statutory appeal illusory. [6] The Apex Court's order of 29th January, 2015 is of no avail to the case of petitioner because in the said case, the husband was in custody and was unable to deposit the arrears of maintenance whereas in the instant case, it is not so. Petitioner is a practicing lawyer, who claims that even respondent is a practicing lawyer. Without getting into this aspect, in the peculiar facts and circumstances of this case, impugned order of 18th December, 2012 is modified to the extent that instead of depositing the entire arrears of maintenance, petitioner is directed to deposit 50% of the maintenance amount from the date of the application after deducting ₹92,000/- from it i.e. the amount already paid to petitioner. Petitioner is granted twelve weeks' time to deposit 50% of the maintenance amount with the trial court. As an interim measure, respondent is permitted to withdraw 50% of the maintenance amount w.e.f. the date of filing of this petition i.e. from January, 2013 till petitioner's appeal is decided by the appellate court.

I am of the view that it is not mandatory in each and every case to ensure deposit of entire arrears as pre-condition of hearing of the appeal, as it will make the remedy of appeal itself nugatory.

For the foregoing reasons, impugned order is modified to the extent that petitioner shall clear 50% of the arrears of maintenance. Learned counsel for the petitioner submits that more than 50% of the arrears of maintenance have already been cleared/deposited. Appellate Court shall proceed to hear the appeal on merits and dispose of the same in accordance with law expeditiously.

Petition is disposed of in the above terms. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J.

SEPTEMBER 27, 2018

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