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

+ W.P.(C) 4998/2018 with CM Nos.19263-64/2018

SMT. AAYESHA

..... Petitioner

Through: Mr.Vimal Wadhawan, Advocate

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr.Kirtiman Singh, CGSC with

Mr.Prateek Dhanda, Advocate

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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15.05.2018

1. This petition has been filed by the petitioner/wife of the respondent No.3, who is a Force personnel and working as a Lance Naik with the Indian Army, praying *inter alia* for quashing/setting aside the order dated 03.04.2018, passed by the respondent No.2, thereby discontinuing the deduction made @ 22% from the pay and allowances of the respondent No.3 for payment to the petitioner, towards maintenance allowance, sanctioned to her in terms of the order dated 17.05.2017.

2. On a petition dated 11.12.2014, submitted by the petitioner to the respondent No.2, seeking maintenance from her husband, vide order dated 17.05.2017, the respondent No.2 had elicited a response from the respondent No.3. After considering the facts of the case, in exercise of powers under Section 91(i) of the Army Act, 1950 read with Rule 193, the respondent No.2 had sanctioned a deduction of 22% of the pay and allowances of the respondent No.3 for payment to the petitioner, towards maintenance w.e.f. 11.12.2014 till April, 2018. Subsequently, the respondent No.2 passed an

order dated 03.04.2018, wherein notice was taken of the fact that the Family Court, Belgavi had granted interim maintenance @ ₹5,000 per month to the petitioner from the date she had filed an application under Section 10 of the Family Court Act, 1984 read with Section 151 CPC which amount was to be paid by the respondent No.3 directly to her.

3. In deference to the order dated 06.01.2018, passed by the Family Court, the respondent No.2 directed discontinuation of the maintenance allowance @ 22% of the respondent No.3's pay and allowances per month with immediate effect. Aggrieved by the said order, the petitioner has filed the present petition.

4. We have perused the documents on record particularly the affidavit dated 07.06.2017, filed by the petitioner before the Family Court, Belgavi wherein she had specifically states in para 7 that she is entitled to maintenance from the respondent No.3/husband. In the application filed by the petitioner under Section 10 of the Family Court Act, 1984 she had claimed a sum of ₹10,000/- per month towards interim maintenance, ₹15,000 per month towards litigation expenses and ₹1,000 towards travelling expenses.

5. After hearing both the parties, the Family Court passed an order dated 06.01.2018, directing the respondent No.3 to pay to the petitioner, a sum of ₹5,000 per month towards interim maintenance from the date of filing of the application, a sum of ₹5,000 towards litigation expenses and a sum of ₹1,000 towards travelling expenses.

6. If the petitioner is aggrieved by the order dated 06.01.2018 passed by the Family Court, Belgavi, it is for her to seek legal recourse by filing an appeal seeking enhancement of the interim maintenance. However, she can

no longer approach the respondents No.1 & 2 by ignoring the order of the Family Court passed on her application.

7. We find no merit in the present petition which is accordingly dismissed along with the pending applications

8. Needless to state that the petitioner will be entitled to seek legal recourse against the order dated 06.01.2018, if she proposes to seek enhancement of the interim maintenance fixed by the Family Court.

HIMA KOHLI, J.

PRATIBHA RANI, J.

MAY 15, 2018

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