

\$~4.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CONT.APP.(C) 7/2018 and CM.APPL. 24121/2018, 37528/2018
DR R K JAIN Appellant

Through: Appellant in person.

versus

R P PANDEY Respondent
Through: None.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE REKHA PALLI

% **ORDER**
13.09.2018

1. The present appeal has been filed by the appellant, who appears in person, under Section 19 of the Contempt of Courts Act against the order dated 12.01.2018 passed by the learned Single Judge in CONT.CAS(C) No. 28/2018 and the order dated 23.02.2018 in the review petition filed by him. We may note that the contempt petition was filed by the appellant against the learned Principal Judge, Family Court before whom **HMA No.66/03** entitled R.K. Jain vs. A. Jain is pending.

2. In the order dated 12.01.2018, the learned Single Judge had recorded the contention of the appellant that the Principal Judge, East Family Courts had not complied with the order dated 11.12.2015, passed

in CM(M) 1190/2015. In the order dated 11.12.2015, the learned Single Judge had observed as follows:-

"The petitioner has tendered in court a compilation of the orders passed by the Family Court from time to time.

The same is taken on record. The grievance of the petitioner, firstly, is that he has filed an additional affidavit to bring out the alleged fraud committed by the respondent in obtaining orders directing payment of maintenance to her. He submits that vide order dated 04.12.2015, the learned Principal Judge, Family Court has raised the issue of maintainability.

In my view, this grievance cannot be raised before this Court and it is for the petitioner to satisfy the Family Court with regard to the maintainability of the endeavour made by the petitioner to seek recall of the orders granting maintenance to the respondent on the ground of fraud.

The admitted position is that the petitioner has not paid the entire maintenance due under the orders of the court. The petitioner states that he is willing to deposit the entire arrears before the Family Court. Let him do so within two weeks. In case the amount is deposited, the same may be released to the respondent. In case, the endeavour of the petitioner to establish the alleged fraud succeeds, it shall be for the Family Court to pass the consequential orders.

The last grievance of the petitioner is that the matter has been adjourned at the request of proxy counsel on account of non appearance of counsel for the respondent.

The Family Court is expected to enforce discipline in the matter of appearance of counsel and parties. It is informed that the disputes between the parties have been pending since 1999. Considering the old age of the case, the Family Court may expedite the disposal keeping in view its pendency and workload.

Petition stands disposed in the aforesaid terms."

3. The order dated 12.01.2018 passed in the contempt petition records that subsequent to passing of the order dated 11.12.2015, the petitioner

had filed an application in the disposed of CM(M) 1190/2015. Vide order dated 11.08.2017, the learned Single Judge had declined to entertain the said application filed by the appellant for seeking further directions to the Family Court on the ground that it could not be entertained in a disposed of matter. However, the appellant was granted liberty to file a separate petition for raising the grievance urged in the said application (CM No. 28924/2017). Though a copy of the captioned application is not on record, on inquiring from the appellant as to the relief that he had prayed for therein, he states that he had filed the said application for issuing directions to the Family Court to take on record, an additional affidavit filed by him to bring out the purported fraud played by the respondent against him.

4. Instead of the filing a fresh petition in terms of the liberty granted to him vide order dated 11.08.2017, the appellant filed CONT.CAS(C) 28/2018, alleging non-compliance of the order dated 11.12.2015 passed in CM(M) 1190/2015. The said contempt petition was disposed of with the following observations :-

"The present petition has been filed by the petitioner alleging non-compliance of order dated December 11, 2015 till date by the Principal Judge, East Family, Courts. Suffice to state that the petitioner had earlier filed a CM(M) 1190/2015. The said applications were disposed of vide order dated August 11, 2017, wherein paras 7 and 8 reads as under:

"7. The petitioner is granted liberty to file a separate petition for the grievance urged in this application.

8. Since CM(M) had arisen out of a matrimonial dispute, the Registry to also seek

instructions from the Hon'ble the Chief Justice as to the Roster before which such petitioners are to be listed."

In view of the paras 7 and 8 of order dated August 11, 2017 the petitioner is required to file a separate petition. The separate petition as noted in para 7 must be CM(M). Liberty is there, for the petitioner to file such petition. If such petition is filed, the Registry shall take action in terms of para 8 of the order dated August 11, 2017 and list the petition appropriately. The present petition being not maintainable, the same is dismissed, with the aforesaid liberty."

5. As can be seen from the aforesaid order, liberty was yet again granted to the appellant to file a fresh Civil Miscellaneous (Main) petition and it was further directed that if he does file such a petition, the Registry shall take appropriate action in terms of para 8 of the order dated 11.08.2017 passed in CM.APPL. 28924/2017, filed by the appellant in CM(M) 1190/2015. It was further observed that the contempt petition as filed by the appellant was not maintainable.

6. Instead of filing a fresh petition, the appellant preferred a review petition (REV. PET. 79/2018) in the contempt case, which was also dismissed on ground that there was no error apparent on the face of the order dated 12.01.2018. The said orders have been sought to be challenged by the appellant in the present appeal.

7. We decline to entertain this appeal in view of the provisions of Section 19 of the Act, that clearly states that an appeal under Section 19 is maintainable only against an order or a decision of the High Court passed in exercise of its jurisdiction to punish for contempt, i.e., an order

imposing punishment for contempt. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt, or an order dropping the proceedings for contempt or an order acquitting/exonerating the contempt, is appealable under the aforesaid provisions. The view expressed by us above, is fortified by the decision of the Supreme Court in the case of Midnapore Peoples' Coop. Bank Ltd. & Others V.Chunilal Nanda & Others reported as **2006(5) SCC 399**.

8. At this stage, the appellant states that he does not wish to press the present appeal. Instead, he seeks liberty to file a petition under Article 227 of the Constitution of India for seeking appropriate relief against the orders passed by the learned Family Court.

9. The present appeal is dismissed alongwith pending application. As and when the appellant files a fresh petition, the same shall be considered and decided in accordance with law.

HIMA KOHLI, J

REKHA PALLI, J

SEPTEMBER 13, 2018

rr/rkb/na