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

+ **MAT.APP.(F.C.) 154/2018 & CM No.27162/2018 (stay)**

Judgment pronounced on 13th July, 2018

RINKU BABU TRIPATHI Appellant

Through: **Mr.G.S. Sharma and Mr.R.A. Sharma,**
Advocates

Versus

RICHA TRIPATHI

..... Respondent

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J.

CM No.27161/2018 (delay)

This is an application seeking condonation of delay of 6 days in filing the present appeal.

Heard.

The delay is condoned.

The application stands disposed of.

MAT.APP.(F.C.) 154/2018 & CM No.27162/2018 (stay)

1. The present appeal is directed against the order dated 13.04.2018, by which the Family Court has fixed maintenance @ of Rs.4,000/- per month for the wife and additionally Rs.4,000/- per month for the minor daughter.

2. Aggrieved by the aforesaid order has led to the filing of the present appeal. Learned counsel for the appellant has strongly urged before the Court that the salary of the appellant is Rs.17,510/- per month. It is further contended that in this amount he is looking after old aged parents and younger brother. It is, thus, contended that the amount which has been awarded by the Trial Court is on the higher side. He also relies on a decision in the case of “**Kalyan Dey Chowdhury vs Rita Dey Chowdhury Nee Nandy**”, Civil Appeal No.5369 of 2017. More particularly, para 15 which we reproduced below:-

*“The review petition under Order XLVII Rule 1 CPC came to be filed by the respondent-wife pursuant to the liberty granted by this Court when the earlier order dated 02.02.2015 awarding a maintenance of Rs.16,000/- to the respondent-wife as well as to her minor son was under challenge before this Court. As pointed out by the High Court, in February 2015, the appellant-husband was getting a net salary of Rs.63,842/- after deduction of Rs.24,000/- on account of GPF and Rs.12,000/- towards income-tax. In February, 2016, the net salary of the appellant is stated to be Rs.95,527/-. Following **Dr.Kulbhushan Kumar vs. Raj Kumari and Anr.** (1970) 3 SCC 129, in this case, it was held that 25% of the husband’s net salary would be just and proper to be awarded as maintenance to the respondent-wife. The amount of permanent alimony awarded to the wife must be befitting the status of the parties and the capacity of the spouse to pay maintenance. Maintenance is always dependant on the factual situation of the case and the court would be justified in moulding the claim for maintenance passed on various factors. Since in February, 2016, the net salary of the husband was*

Rs.95,000/- per month, the High Court was justified in enhancing the maintenance amount. However, since the appellant has also got married second time and has a child from the second marriage, in the interest of justice, we think it proper to reduce the amount of maintenance of Rs.23,000/- to Rs.20,000/- per month as maintenance to the respondent wife and son".

3. We have heard the learned counsel for the appellant and also examined the order passed by the Family Court. The Family Court has taken into consideration the submissions made by both the parties. According to the wife, the husband is working as a Contractual Lab Technician in a private clinic and is earning Rs.17,000/- per month. The husband has stated that the wife is also working as a beautician. The Family Court has only relied upon the salary certificate of the husband produced for the month of November, December 2017 and January 2018 respectively, according to which his salary is Rs.17,510/- per month. The Family Court has also not placed reliance on a visiting card and copies of the photographs of signboard in the name of Dr. R.B. Tripathi and Tripathi Clinic placed on record by the wife to show that the husband is working with the said clinic part time and observed that the disputed question of fact would be considered and after the parties adduce evidence during trial.
4. Learned counsel for the appellant has submitted that while passing the impugned order dated 13.04.2018, the Family Court has failed to take into account that the appellant is looking after his old aged parents and younger brother. We are unable to accept the

submission made by the counsel for the appellant for the reason that during the course of hearing, counsel for the appellant had fairly stated that the father of the appellant is still working. Resultantly, it would be the responsibility of the father to look after his younger son and it would not be the responsibility of the appellant herein. We may also note that although the respondent-wife has alleged that besides working as contractual Lab Technician in a private clinic, the appellant is also working with the Tripathi Clinic. She has also placed reliance on the visiting cards and copies of photographs of signed board in the name of Dr. R.B. Tripathi and Tripathi Clinic, which the family Court did not rely upon while considering the application seeking maintenance.

5. While deciding an application for grant of maintenance, the Court must consider the status of the party and the capacity of the spouse to pay the maintenance. In our view, there is no infirmity in the amount of maintenance which has been awarded by the Family Court. The wife has only studied upto class 12th. She has no other source of livelihood and in the sum of Rs. 8,000/-, she has to maintain herself and her eight years old daughter.
6. Accordingly, we find no merit in the present appeal. The same is accordingly dismissed.

G. S. SISTANI, J

SANGITA DHINGRA SEHGAL, J

JULY 13, 2018/ afa