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

+ CM(M) 768/2018 & CM No.27214/2018 (for stay)

BRIG SANJAY PURI Petitioner

Through: Mr. Manoj Chauhan & Mr. Vikas
Nagpal, Advs.

Versus

SHWETA PURI & ANR Respondents

Through: Ms. Geeta Luthra, Sr. Adv. with Mr.
Ujjwal Jain, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **15.10.2018**

1. This petition under Article 227 of the Constitution of India impugns the order [dated 6th June, 2018 in HMA No.670/2015 of the Court of Principal Judge, Family Courts, New Delhi] allowing the application of the respondent no.1 / wife under Section 151 CPC and directing the petitioner / husband to, in addition to the maintenance of Rs.30,000/- per month, pay rent of the accommodation taken by the respondent / wife after her eviction under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 proceedings from the defence accommodation allotted to the petitioner / husband by virtue of his posting at Delhi.

2. This petition came up first before this Court on 13th July, 2018 when notice thereof was accepted by the counsel for the respondent / wife appearing on caveat.

3. I have enquired from the counsel for the petitioner / husband, whether not the order is appealable under Section 19 of the Family Courts Act, 1984

in terms of the dicta of the Division Bench of this Court in *Manish Aggarwal Vs. Seema Aggarwal* (2012) 192 DLT 714 (DB).

4. The counsel for the petitioner / husband states that the order is not on an application under Section 24 of the Hindu Marriage Act, 1955 but is on an application under Section 151 CPC and would thus not be appealable. Reliance is placed on *Garima Singh Vs. Sanjai Singh* II (1996) DMC 422.

5. Once there is a judgment of the Division Bench of this Court, the reliance on the judgment of a Single Judge of the Allahabad High Court is out of place.

6. Thus there is no merit in the contention that the order is on an application under Section 151 of the CPC. The effect of the impugned order is of modification of the earlier order on the application under Section 24 of the Hindu Marriage Act and the order would remain as that of interim maintenance and which as per the dicta in *Manish Aggarwal* supra is appealable.

7. The counsel for the petitioner / husband withdraws this petition with liberty to approach the appropriate fora and states that the delay be condoned.

8. The condonation of delay is in the jurisdiction of the fora which is to be approached.

9. The petition is dismissed as withdrawn.

10. Needless to state that the petitioner / husband, in accordance with law shall be entitled to avail of the appropriate remedy.

No costs.

Dasti.

RAJIV SAHAI ENDLAW, J

OCTOBER 15, 2018/‘gsr’..

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