

\$~3.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 770/2018, CM No.27329/2018 (for stay) and CM No.31850/2018 (of the petitioner for clarification of order dated 13th July, 2018).

SAURABH KR DUBEY

..... Petitioner

Through: Ms. Aastha Dhawan and Ms. Diksha Mathur, Advs.

versus

PRATIBHA

..... Respondent

Through: Respondent in person.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

25.09.2018

1. This petition under Article 227 of the Constitution of India impugns the order [dated 18th April, 2018 in HMA No.467/2015 of the Court of Principal Judge, Family Court, Shahdara, Delhi] of payment of interim maintenance by the petitioner/husband to the respondent/wife @ Rs.12,000/- per month with effect from the date of filing the application for interim maintenance, till 31st December, 2017 and @ Rs.18,000/- per month with effect from 1st January, 2018.

2. The petition came up first before this Court on 13th July, 2018 when it was informed that the petition for dissolution of marriage, filed by the petitioner husband and in which the order aforesaid was made, itself had already been disposed of on 18th May, 2018 and the petitioner husband had preferred an appeal thereagainst and which was pending before the Division Bench.

3. Though this Court on 13th July, 2018 was not inclined to entertain this petition, as is evident from the order of the said date but on the statement of the senior counsel then appearing for the petitioner husband that the respondent wife is an Advocate and if a notice for a short date is issued, attempt will be made to have the matter amicably settled, notice was issued.

4. The respondent wife appeared in response to the notice and the parties were referred to mediation which remained unsuccessful.

5. Though on 13th July, 2018 I was not aware but since have found the dicta of the Division Bench of this Court in ***Manish Aggarwal Vs. Seema Aggarwal*** (2012) 192 DLT 714 laying down that an order of interim maintenance under Section 24 of the Hindu Marriage Act, 1955, as the impugned order in the present case is, is appealable under Section 19(1) read with Section 19(6) of the Family Courts Act, 1984 before the Division Bench of this Court.

6. The counsel for the petitioner husband however states that the petitioner husband though in appeal, being Matrimonial Appeal F.C. 137/2018, preferred against the judgment dated 18th May, 2018 supra disposing of the petition for divorce, besides the order dated 18th May, 2018 had also challenged the order dated 18th April, 2018 impugned in this petition but has subsequently filed an application informing of this petition having been filed. She also states that different High Courts other than this Court have taken different views about the remedy available against the order under Section 24 of the Hindu Marriage Act.

7. Need for the counsel to refer to judgments of the other High Courts does not arise since the Division Bench of this Court, after considering all

the said judgments, has concurred with the judgments holding the remedy of appeal under Section 19(1) of the Family Courts Act to be available. Moreover, for the lapse of the petitioner husband, this Court cannot appropriate to itself, jurisdiction which it does not have.

8. This petition under Article 227 of the Constitution of India is thus clearly misconceived and is dismissed.

9. The counsel for the petitioner husband at this stage states that the petitioner husband will take appropriate remedies and states that she has already challenged the order impugned in this petition, in appeal.

Dasti.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 25, 2018

‘pp’..