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

% *Date of Judgment: 12th November, 2018*

+ **MAT.APP.(F.C.) 195/2018**

ZEENY JHELUMI

..... Appellant

Through: Mr. Paramjit Singh Patwalia, Sr. Adv. with
Mr. Vanshdeep Dalmia &
Ms. Natasha Dalmia, Advs.

versus

INDERPREET SINGH JHELUMI

..... Respondent

Through: Mr. Sanjeev Sahay with Mr. Prateek Yadav
& Ms. Himangi Kapoor, Advs.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

1. The present appeal is directed against the order dated 20th March, 2018 passed by Principal Judge (South), Family Courts, Saket. Some necessary facts which are required to be noticed for disposal of this appeal are as under:-
 - i) Marriage between the parties was solemnized on 24th October, 1999;
 - ii) Out of the wedlock two children were born who are 15 years (daughter) and 11 years (son) old;
 - iii) Both the children are residing with the appellant-wife.

2. Various allegations and counter-allegations have been made in this petition. It is not necessary to record the same. With a view to appreciate the submissions of learned counsels appearing for the parties we deem it appropriate to reproduce order of 20th March, 2018 (the ‘impugned order’):-

“Sh.Chetan Anand has filed his vakalatnama on behalf of the defendant. Same is taken on record.

Plaintiff has moved two applications u/sec.-151 CPC on 08.03.2018 (i) seeking inter-alia medical examination of the defendant and (ii) seeking defendant not to cause any damage to the belongings of (SIC) plaintiff and children.

Notice of the applications is issued to the defendant. Sh. Anand accepts notice and seeks adjournment to file reply to the applications.

Mr. Dalmia undertakes to supply the copy of the applications to Sh.Anand during the course of the day.

Another application has been moved today u/sec.-151 CPC seeking to place on record additional documents.

The application moved today is allowed. Documents are taken on record.

It is, principally, agreed between the parties through their respective Ld. (SIC) counsels that they shall remain bound by the terms of settlement arrived at between them, before the Delhi High Court Mediation & Conciliation Center on 02.06.2017. However, since the plaintiff has expressed apprehension and fears regarding the defendant creating third party rights qua the assets, which were subject matter of the agreement; it is directed that till further orders both the parties shall not create third party rights in the suit properties.

It is next agreed that till further orders children namely Alya & Raunaq (SIC) shall remain in custody of the plaintiff (SIC). However, defendant shall have assisted visitation, which shall take place in the room of Ms. Sangeeta Singh – Principal Counsellor on 01st and

03rd Wednesday of each month from 02:00 PM to 04:00 PM.

It is further agreed between the parties that in terms of para no.2 of the settlement dated 02.06.2017, plaintiff shall keep getting the rent, which amounts to Rs.2.5 lakhs.

Ordered accordingly,

Defendant may file reply to the applications, as well as, WS to the main suit within 3 weeks from today, with a copy to the opposite counsel at least 1 week in advance.

Now, to come up for disposal of the applications on 07.05.2018 at 02:00 PM.

Copy Dasti.”

3. Mr. Patwalia, learned Senior Counsel appearing for the appellant submits that although the order is a consent order, but in the concluding part of the order the Family Court has directed that the appellant would continue to get rent amounting to Rs.2.5 lacs while giving reference to the terms of settlement arrived at between the parties before the Delhi High Court Mediation and Conciliation Centre on 2nd June, 2017 where a sum of Rs.6,25,000/- was agreed upon. It is contended by Mr. Patwalia that as per settlement more particularly reflected at page 92 of the paper book, the appellant was to receive 6.25 lacs per month. The relevant portion relied upon is reproduced below:-

“1) The Second Party has agreed that the First Party shall have unconditional access to a sum of Rs.6,25,000/- (Rupees Six Lakhs Twenty Five Thousand Only) per month in her separate personal account with Deutsche Bank bearing A/c No.400026451730019) and the First party shall be authorised to withdraw the said amount by or before 15th of every month to meet the following expenses:-

(a) Staff salary at home	Rs.1,50,000/-
(b) Household expenditure	Rs.1,20,000/-
(c) Childrens' tuition/extra Classes other curricular activities	Rs.50,000/-
(d) Childrens' Misc Expenditure	Rs.30,000/-
(e) Personal expenses of the First Party	Rs.70,000/-
(f) Childrens' RD/SIP/PPF (Saving Deposits)	Rs.2,05,000/-
<i>Grand Total</i>	<i>Rs.6,25,000/- "</i>

4. Mr. Patwalia submits that the Family Court has given no reasons as to why this amount has been reduced. Mr. Patwalia further submits that during the pendency of this appeal two orders have been passed dated 23rd May, 2018 and 31st May, 2018 which outlined the concern of the appellant and further the consent given by the senior counsel who had appeared on 31st May, 2018 on behalf of the respondent and the order passed by the Court on the said date. Mr. Patwalia, learned Senior Counsel contends that not only the terms of the settlement have been flouted, the respondent has also flouted with impunity of the order dated 31st May, 2018 and for which he has already filed a petition under the Contempt of Courts Act, 1971 which is listed separately today.
5. Mr. Patwalia submits that the terms of the settlement read with the order dated 31st May, 2018 should be complied with by the respondent. Mr. Patwalia further submits that instead of receiving Rs.6.25 lacs per month, the appellant is only receiving Rs.35,000/- per

month and Rs.80,000/- from the property at Ghaziabad has not been received since February, 2018.

6. Mr. Patwalia also informs this Court that initially the appellant was residing in the house of one of her uncle but she has now taken an apartment on rent and the rent is being paid by her brother.
7. Mr. Sahay, on instructions from the respondent who is present in Court, submits that he has not in any way obstructed the payment of Rs.1.35 of rent to the appellant and he would not do so in future as well. The respondent shall remain bound by the statement made in Court today.
8. Mr. Sahay, learned counsel for the respondent submits that firstly, the present appeal would not be maintainable as the order of 20th March, 2018 is a consent order. Secondly, Mr. Sahay submits that the order is purely interim in nature which is evident upon reading the last line of the order as per which the matter was adjourned for 7th May, 2018 at 2.00 PM for disposal. Thirdly, Mr. Sahay submits that post-filing of the appeal, the matter has been adjourned by the Family Court at the request of the appellant and thus the appellant cannot seek relief before this Court as the Family court is seized of the matter.
9. We have heard learned counsel for the parties. We have also examined the terms of the settlement arrived at before the Delhi High Court Mediation and Conciliation Centre dated 2nd June, 2017. We have also carefully examined the order of 31st May, 2018. According to Mr. Patwalia, order dated 31st May, 2018 is based on the statement made by Mr. Salman Khurshid, Ld. Senior Counsel, who appeared on

behalf of the respondent and in part the order contains directions passed by the Learned Court.

10. It is the contention of Mr. Sahay *per contra* that the order of 31st May, 2018 cannot be looked into as the order was passed by the Single Judge in FAO No.260/2018 when in fact an appeal under Section 19(1) of the Family Courts Act was maintainable. Additionally, Mr. Sahay contends that the Ld. Single Judge and the Mediator and the settlement did not take into account the earning of the respondent.
11. We do not find any force in the submission made by Mr. Sahay for the reasons that neither the terms of the settlement have been recalled or set aside by any Court nor the order of 31st May, 2018 has been recalled nor the statement made on behalf of the respondent can be withdrawn. In our view, leaving the objections raised by Mr. Sahay open lest it causes prejudice to him in the contempt petition, which has been instituted and in which we have issued notice today, till the order of the 31st May, 2018 is set aside the same is to be complied with. As far as the impugned order is concerned reading of the same, no doubt, shows that it is a consent order and thus no relief can be granted to the appellant.
12. At this stage, Mr. Patwalia submits that it may be a typographical error that a figure of Rs.2.5 lacs has been mentioned instead of Rs.6.25 lacs as per the settlement because a complete reading of the order would show that, on the one hand, it records that the records that the parties had principally agreed to remain bound by terms of the settlement wherein the respondent had agreed to pay Rs.6.25 lacs per

month to the appellant whereas in the latter part, a figure of Rs.2.5 lacs has been mentioned.

13. We are informed that the matter is now listed before the Family Court on 7th December, 2018. We grant leave to the appellant as prayed to raise this issue regarding reduction to Rs.2.5 lacs before the Family Court either by filing a new petition or otherwise. We also grant liberty to both the parties to rely on such documents as are available during the course of arguments before the Family Court.
14. With these directions, the present appeal is disposed of.

G.S.SISTANI, J

JYOTI SINGH, J

NOVEMBER 12, 2018

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