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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ MAT.APP.(F.C.) 90/2017 & CM Nos. 19605/2017 (stay of proceedings in HMA 2040/2017), 33292/2017 (for additional documents) & 3508/2018 (for additional evidence)

REKHA KATARIA Appellant
Through Mr. Pankaj Bhatia, Mr. Dhruv Surana,
Mr. Ashish Choudhary and Mr. Nipun
Goel, Advocates.

versus

VENEET KATARIA & ANR Respondents
Through Mr. Prabhjit Jauhar and Ms. Upasana
Goel, Advocates.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% **15.03.2018**

1. The present appeal under Section 19 of the Family Courts Act, 1984, read with Section 24 of the Hindu Marriage Act, 1955 (hereinafter referred to as the “said Act”) assails the correctness of an order dated 1st April, 2017 passed by the learned Additional Principal Judge Family Court, West District, Tis Hazari Courts, Delhi; in HMA No. 2040/2014, titled as “*Veneet Kataria vs. Rekha Kataria*”, whereby an application under Section 24 of the said Act filed on behalf of the appellant herein was dismissed.

2. Having heard learned counsel for the parties and perused the impugned order, we are of the view that the conclusion arrived at by the learned Family Court to the effect that since the appellant had the capacity and capability to earn, the question of knowing the financial status of the respondent for the disposal of the said application did not arise at that stage, is untenable in law.

3. In a recent decision, the Hon'ble Supreme Court in CRL.A. No. 125-126/2017, titled as "*Shailja & Anr. vs. Khobbanna*", whilst considering the grant of maintenance was pleased to observe as follows:-

"That apart, we find that the High Court has proceeded on the basis that the appellant No. 1 was capable of earning and that is one of the reasons for reducing the maintenance granted to her by the Family Court. Whether the appellant No. 1 is capable of earning or whether she is actually earning are two different requirements. Merely because the appellant No. 1 is capable of earning is not, in our opinion, sufficient reason to reduce the maintenance awarded by the Family Court."

4. A plain reading of the above extracted paragraph clearly postulates that the denial of maintenance to a spouse predicated on the premise that she was capable of earning is not sustainable in law. That is precisely the reason ascribed by the learned Family Court to not determine the application for maintenance on the merits. In our considered view, the learned Family Court has failed to exercise the jurisdiction vested in it under the mandate of law.

5. In view of the foregoing and with the consent of the parties, the impugned order is set aside. The application under Section 24 of the said Act is remanded back to the learned Family court for adjudication *de novo*, in accordance with law. In view of the circumstance that the proceedings for maintenance have been pending determination for the past three years, it is hoped and expected that the learned Family Court shall proceed to adjudicate the same as expeditiously as possible and preferably within a

period of six months from the next date of hearing before that Court, without granting any unwarranted adjournments to the parties. This direction has been issued bearing in mind that the evidence on behalf of the parties is currently underway in the main matter.

6. List the matter before the concerned Court for further proceedings, in accordance with law, on 5th April, 2018, the next date fixed in the main proceedings.

7. Copy of the order be sent to the concerned District Judge for communication to the concerned Court.

8. With the above direction, the present appeal is disposed of. Pending applications also stand disposed of.

SIDDHARTH MRIDUL, J

REKHA PALLI, J

MARCH 15, 2018

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