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

+ CM(M) 1037/2018, CM No.36033/2018 (for stay).

NARESH KUMAR Petitioner

Through: Mr. Abhimanyu Lall, Adv.

versus

SUMITRA Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **05.09.2018**

CM No.36034/2018 (for exemption).

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CM(M) 1037/2018, CM No.36033/2018 (for stay).

3. This petition under Article 227 of the Constitution of India impugns the order [dated 4th May, 2018 in HMA No.1331/2018 of the Court of Principal Judge, Family Courts, West] allowing the application of the respondent-wife under Section 24 of the Hindu Marriage Act, 1955 and directing the petitioner-husband to pay maintenance at the rate of Rs.5,000/- per month and litigation expenses in the sum of Rs.7,000/-.
2. On the counsel for the petitioner filing this petition, the Registry of this Court raised an objection as to the maintainability of the petition. However, notwithstanding the said objection, the counsel for the petitioner endorsed that the petition was maintainable and that he will satisfy this Court as to the maintainability thereof. The Registry, accordingly has listed

the petition before this Court.

3. However, on the counsel for the petitioner being asked to satisfy the Court as to the maintainability thereof, all he says is that he had prior to filing this petition filed an appeal under Section 19 of the Family Courts Act, 1984 against the impugned order but the Registry of this court raised an objection as to the maintainability thereof and thus this petition has been filed.

4. The explanation aforesaid does not even amount to an attempt to satisfy the Court in law as to the maintainability of the petition, as expected from an Advocate. The Advocates are supposed to know the law and on the Registry raising an objection, required to satisfy the Registry officials by citing law. The Advocates cannot allow themselves to be thrown from one jurisdiction to another, like a ping pong ball, by the said officials.

5. The counsel, in spite of the Registry raising objection as to the maintainability of this petition, did not bother to check-up the law and appears to have mechanically made the endorsement reiterating that the petition is maintainable. Though the explanation of the earlier appeal having been filed is given but the counsel does not have with him the endorsement made as to the maintainability of the appeal earlier filed. The counsel however states that the appeal was filed vide diary no.196468/2018 on 16th August, 2018.

6. The matter was passed over and the appeal filed vide diary number aforesaid was requisitioned.

7. The Registry has reported that the petitioner has collected back what was filed vide the aforesaid diary number.

8. The counsel for the petitioner has however produced before this Court the index of Mat.App.(F.C.) filed vide diary number aforesaid and wherefrom it appears that one of the objections was “It should be stated as to how MAT.APP (F.C.) is maintainable”.

9. The counsel for the petitioner further shows his endorsement, at the bottom of the aforesaid index, to the effect that the appeal against the impugned order was maintainable under Section 19 of the Family Courts Act, 1984.

10. Though there is nothing to show which order was challenged in the Mat. App. sought to be filed but it is the contention of the counsel for the petitioner that it was the same order as impugned in this petition. The counsel for the petitioner further states that inspite of his endorsement aforesaid, the Mat. App. was not being listed and thus the Mat. App. was given up and this petition filed.

11. Attention of the counsel is drawn to the dicta of the Division Bench of this Court in ***Manish Aggarwal Vs. Seema Aggarwal*** (2012) 192 DLT 714 holding that an order on an application under Section 24 of the Hindu Marriage Act cannot be classified as an interlocutory order and an appeal under Section 19 lies thereagainst.

12. It was for the counsel for the petitioner to show the aforesaid judgment to the officials of the Registry who had raised the objection as to maintainability of the Mat. App. Moreover, merely because inspite of endorsement of the counsel that the appeal was maintainable the appeal was not being listed, perhaps owing to other objections raised having not been removed, was not reason for the counsel to give up the correct remedy and

to prefer the remedy under Article 227 which can be preferred only if there is no alternate efficacious remedy.

13. There is thus no choice but to dismiss this petition as not maintainable.

Dismissed as not maintainable.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 05, 2018

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