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

+ MAT.APP.(F.C.) 258/2018

PRATIK PUSHPANKAR GUPTA

..... Appellant

Through: Mr.V.Eleanchezhiyan, AOR, Mr.Rashid
and Mr.Vivek Yadav, Advts.

versus

ARUNA GANGAL & ANR.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

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08.10.2018

C.M.41732/2018 (exemption)

Exemption is allowed subject to just exceptions.

Application stands disposed of.

C.M.41731/2018 (delay)

The present application has been filed by the appellant seeking condonation of delay in filing the present appeal.

For the reasons mentioned in the application, the delay of 06 days in filing the present appeal is condoned.

The application stands disposed of.

MAT.APP.(F.C.) 258/2018 & C.M.41730/2018 (stay)

Challenge in this appeal is to the order dated 21.08.2018 passed in Ex.No.02/18 wherein the Family Court has directed the appellant to clear the outstanding amount of Rs.1,20,000/- within one month. The main grievance of the counsel for the appellant is that since the appellant has raised the plea of adultery and the capability of the respondent to earn, which issues are yet to be decided, the appellant cannot be burdened with the payment of maintenance. We may note that the order which is under challenge before us has been passed

in the execution proceedings whereas the application under Section 24 of the Hindu Marriage Act is yet to be finally decided by the Family Court.

We, accordingly, grant liberty to the appellant to raise all grounds including the ground of adultery and capability of earning by the respondent, before the Family Court. We have no hesitation in saying that before passing a final order, in the proceedings arising out of Section 24 of the Hindu Marriage Act, the Family Court would consider and decide the aforesaid two issues as well. We also clarify that any payment made by the appellant to the respondent would be subject to the final order and judgment in the proceedings arising out of the Section 24 of the Hindu Marriage Act.

With these agreed directions, the appeal and C.M.41730/2018 are disposed of.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

OCTOBER 08, 2018

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