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

+ **MAT.APP.(F.C.) 291/2019 & C.M.Applns.48385-86/2019**

ROHIT KUMAR Appellant

Through: Mr. M.K.Verma, Advocate

versus

BHAVNA Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

% **08.11.2019**

1. The appellant/husband has filed the present appeal under Section 19(1) of the Family Court Act challenging an order dated 01.10.2019, passed on a review application filed by him for seeking review of an order dated 08.06.2017, passed by the Family Court under Section 24 of the Hindu Marriage Act whereunder, the respondent/wife was awarded *pendente lite* maintenance @ Rs.4,000/- per month from the date of her moving the said application, till the disposal of a petition filed by the appellant/husband for declaring his marriage with the respondent as a nullity.

2. At the outset, we have requested learned counsel for the appellant to address us on the maintainability of the present appeal, particularly, when aggrieved by the order dated 08.06.2017, the appellant/husband had taken steps in the year 2017 itself to file a Civil Miscellaneous Main petition in the High Court, which was dismissed vide order dated 24.10.2017. We have

also enquired from learned counsel for the appellant as to whether the appellant had preferred an appeal against the order dated 24.10.2017 before the Supreme Court. He states that no appeal was preferred. Instead, the appellant/husband had filed an application under Section 114 read with Order 47 Rule 1 CPC praying *inter alia* that the order dated 08.06.2017 be reviewed.

3. It is the afore-said application for review filed by the appellant/husband that the Principal Judge, Family Court has dismissed by the impugned order recording *inter alia* that having filed a Civil Miscellaneous Main petition against the order dated 08.06.2017, which came to be dismissed by the High Court, he cannot be permitted to challenge the assessment of his income on the basis of minimum wages that forms the basis of the order dated 08.06.2017 directing him to pay *pendente lite* maintenance to the respondent/wife @ Rs.4,000/- per month. Further, taking note of two clerical errors pointed out by learned counsel for the appellant/husband in the order dated 08.06.2017, that instead of the word ‘petitioner’, the word ‘respondent’ has been used by the Court in the last sentence of para 9 and further, in para 2 of the said order, the date ‘21.04.2015’, recorded as the date on which the parties had got married, ought to read as ‘17.05.2015’, the said errors were corrected.

4. Basing his claim on the aforesaid correction of the clerical errors in the order dated 08.06.2017, as rectified vide order dated 01.10.2019, the appellant/husband has filed the present appeal claiming that he is entitled to challenge the review order, irrespective of the fact that the order dated 08.06.2017, passed by the Family Court has been upheld by the High Court.

Learned counsel for the appellant/husband states that the corrections made in the order dated 01.10.2019 are “very destructive” inasmuch as the direction to pay maintenance and clear the arrears in the original order dated 08.06.2017, was issued to the “respondent”. The respondent is none other than the appellant’s wife and the application for seeking *pendente lite* maintenance was filed by her. It is the submission of the counsel for the appellant that the aforesaid clerical errors having been rectified vide order dated 01.10.2019, the present appeal is maintainable.

5. We are of the view that the present appeal is misconceived and a gross abuse of the process of the court. The appellant appears to be using every tactic under the Sun to somehow or the other avoid paying the maintenance awarded to the respondent/wife in terms of the order dated 08.06.2017, that had been duly upheld by the High Court vide order dated 24.10.2017. Further, the records reveal that the appellant has not even complied with the said order and the respondent/wife has had to approach the Family Court for seeking execution of the order dated 08.06.2017, by filing Execution Petition No.22/2018. It appears that the appellant/husband has been resisting the said petition on the specious plea that errors had crept in the order dated 08.06.2017 and he has asserted that till the said clerical errors are rectified, the execution petition cannot be proceeded with further. The appellant cannot be permitted to take advantage of the innocuous clerical errors in paras 2 & 9 of the order dated 08.06.2017, wherein the date of marriage of the parties came to be wrongly recorded and instead of directing the appellant/husband to clear the arrears of maintenance, the order recorded that the respondent/wife was to clear the arrears of maintenance.

We deprecate the circuitous route adopted by the appellant to somehow or the other overcome the order dated 08.06.2017, passed by the Family Court and upheld by the High Court on 24.10.2017. Now that the minor clerical errors in the order dated 08.06.2019 have been rectified by the impugned order dated 01.10.2019, it is for the appellant/husband to approach the executing court.

6. The present appeal is not maintainable and is accordingly dismissed *in limine* alongwith the pending applications with costs of Rs.5,000/- imposed on the appellant/husband to be paid to the respondent/wife in the pending execution proceedings. A copy of this order be transmitted by the Registry forthwith to the concerned Family Court for information.

HIMA KOHLI, J

ASHA MENON, J

NOVEMBER 08, 2019

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