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

% *Date of Judgment: 19th of March, 2019*

+ **MAT.APP.(F.C.) 83/2019**

S P

..... Appellant

Through: Mr. K.B. Hina, Advocate.

versus

M

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

CM APPL 12567/2019 (exemption)

1. Exemption is allowed subject to all just exceptions.
2. Application stands disposed of.

CM APPL 12568/2019 (delay in filing) & CM APPL 12569/2019 (delay in re-filing)

3. These applications have been filed by the applicant/appellant seeking condonation of delay in re-filing and filing the present appeal.
4. For the reasons stated in the applications, prayers made in the applications are allowed. Delay of 86 days in filing and 7 days in re-filing the appeal is condoned.
5. The applications stand disposed of.

MAT.APP.(F.C.) 83/2019 & CM APPL 12566/2019 (stay)

6. The present appeal arises out of an interim order dated 12.10.2018 passed by the Family Court on an application filed by the

respondent/wife under Section 24 and Section 26 of the Hindu Marriage Act (hereinafter referred to as 'HMA') seeking maintenance for herself and her 12 year old son, who is in her care and custody.

7. We may note that the learned Family Court while relying upon the order passed in the proceeding arising out of Domestic Violence Act has fixed maintenance of Rs.4,000/- per month. The Family Court also considered the fact that the child is growing and there is a constant devaluation in the value of money and thereby enhanced maintenance @ 8% per annum.
8. The brief facts of the case to be noticed for the disposal of the present appeal are that the marriage between the parties was solemnized on 11.05.2006 at New Delhi as per Hindu rites and ceremonies. One son was born on 09.05.2007 out of the said wedlock, who is staying with the respondent herein. As per the respondent/wife, the parties are living separately since 22.02.2007. The petition seeking divorce under Section 13 (1) (ia) of HMA was filed by the respondent/wife on 13.04.2011 which is pending.
9. The counsel for the appellant/husband restricts his argument to the findings enumerated in para 6.1 of the impugned order wherein the computation of arrears has been carried out. Counsel for the appellant/husband submits that the appellant is unemployed as on date. However, the appellant who is present in Court submits that he works as a sweeper in a private export company.
10. We have heard learned counsel for the appellant/husband and given our thoughtful consideration to the matter. We have also carefully examined the order passed by the Family Court. The operative portion of the order

passed by the Family Court reads as under:

“5.2 This court also find no merits in those arguments. There is no material placed on record by the petitioner to indicate the income of the respondent. The respondent has also avoided to file his latest income bank account statement or the proof of income. The court is, therefore, left with no parameter to quantify maintenance pendente lite. It is noticed that Ld. MM, vide order dated 04.02.2010 had granted an amount of Rs. 4,000/- as maintenance, which order has not been set-aside. The order has, therefore, become final between the parties. Thus, this court is of the opinion that an amount of Rs. 4,000/- per month towards the pendente lite shall serve the ends of justice from the date of filing of the application. However, considering the fact that the child is growing and also considering the fact that there is constant devaluation in the value of money, therefore, this court is of the opinion that enhancement of 8 % per annum on the amount initially awarded shall also serve the ends of justice.”

11. The issue of interim maintenance has been discussed time and again by the Hon'ble Supreme Court and this Court in various judgments. In the case of ***Chaturbhuj v. Sita Bai*** reported at (2008) 2 SCC 316, the Hon'ble Supreme Court discussed the object of the maintenance proceedings and also duty of a man to maintain his wife, children and parents when they are unable to maintain themselves. The Apex Court further interpreted the phrase “*unable to maintain herself*”. The relevant paras 6 reads as under:

“6. The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase “unable to maintain herself” in the instant case would mean that

means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow....”

(Emphasis Supplied)

12. Reading of the impugned order would show that the Family Court has taken into account that the child is growing and there is constant devaluation in the value of money, enhanced the maintenance awarded to the respondent/wife by 8 % per annum. Taking into consideration that Rs. 4,000/- per month was fixed in the proceedings arising out of the Domestic Violence Act as far back as on 04.02.2010 and the fact that the respondent/wife is maintaining herself and her 12 years old school going child, we find there is no infirmity or illegality in the order passed by the Family Court, which requires any interference.
13. Accordingly, the appeal and CM APPL 12566/2019 stand disposed of.
14. At this stage, counsel for the appellant/husband submits that the time may be granted to clear the arrears.
15. We have no hesitation in saying that in case the request is made before the Executing Court, the Executing Court will consider the same favourably after recording the undertaking of the appellant herein.

G.S.SISTANI, J.

JYOTI SINGH, J.

MARCH 19, 2019//