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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Judgment: 28.03.2019

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MAT.APP.(F.C.) 55/2017 & CM.APPL 12283/2017

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..... Appellant

Through: Mr. Ankul Chandra Pradhan, Senior
Advocate with Mr. Rahul Baid,
Advocate for the appellant along with
appellant

Versus

M K D

..... Respondent

Through: Mr. Praveen Kumar Singh, Advocate
along with respondent

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

1. Challenge in the present appeal is to the interim order dated 18.11.2016 passed by the Family Court on an application filed by the respondent/wife under Section 24 of the Hindu Marriage Act (hereinafter referred to as 'HMA') whereby maintenance of Rs.30,000/- per month has been awarded for the school going minor child alongwith the litigation expenses of Rs. 11,000/- to the respondent-wife.
2. 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 03.12.2003 at Sambalpur, Odisha as per Hindu rites and ceremonies.

One son was born on 25.05.2006 out of the said wedlock. As per the appellant-husband, the respondent-wife has deserted him on 23.03.2008. However, the respondent-wife claims that she has been deserted by the appellant-husband in April, 2008 and thereafter she is living in a rented accommodation with her minor son. The petition seeking divorce under Section 13 (1) (ia) & (ib) of HMA was filed by the respondent-wife on 24.07.2014, which is pending.

3. Mr. Ankul Chandra Pradhan, learned senior counsel appearing on behalf of the appellant-husband submits that the impugned order passed by the Family Court is a non-speaking order and there is no basis on which the Family Court has granted maintenance of Rs. 30,000/- per month to the child without taking into account the expenses incurred by the appellant-husband for the future exigencies and welfare of the minor son.
4. Learned counsel has relied upon Section 20 of the Hindu Adoption and Maintenance Act (hereinafter referred to as 'HAMA') while contending that it is the duty of both the parents to bear the expenses of their child. The respondent-wife is currently working as Chief Sub-editor with DB Corp, Noida and is earning a handsome salary. In this backdrop, the counsel submits that the respondent-wife is capable enough to bear the expenses of the minor child and thus prays that the impugned order be set aside.
5. Mr. Praveen Kumar, learned counsel for the respondent-wife has opposed this appeal on the ground that there is no illegality or infirmity in the view taken by the learned Family Court as

maintenance has been awarded only to the minor child on account of the fact that the child is of growing age and for his normal upbringing, the Family Court deemed it fit to grant maintenance of Rs. 30,000/- per month. The counsel further submits that the learned Family Court has denied maintenance to the respondent-wife by holding that she has independent source of income which is sufficient to meet her expenses.

6. Counsel for the respondent-wife further submits that the appellant-husband is currently working as a Technical Architect in NIIT Technologies, Greater Noida and as per the current salary slip filed by the appellant-husband, he is earning Rs. 1,27,068/- per month after deductions. In this backdrop, the maintenance awarded for the minor child suffers from no infirmity.
7. We have heard the learned counsels for the parties and carefully examined the order passed by the Family Court. The operative portion of the impugned order dated 18.11.2016 reads as under:

“The petitioner in the present case is admittedly employed as Chief Sub-Editor with DB Corp. at Noida and has, thus, independent source of income which is sufficient to meet her expenses. Hence, she is not held entitled to maintenance from the respondent for herself but for the minor son of the parties she is entitled to receive maintenance. The monthly salary of the respondent is more than that of the petitioner but the fact that he is making payments on regular basis towards various policies, mutual funds and deposits for the benefit of the minor son and petitioner cannot be ignored. However, the stand taken by him that he has responsibilities towards his parents and sister cannot be considered at this stage since no supporting affidavit with regard to his parents' financial status has been filed on record. It is observed that the respondent admits in his financial

affidavit, the ownership of two residential units besides holding of stocks & shares and also earning additional income. His liquid assets are almost equal to his borrowings. Considering the living standard of the petitioner in the context of contemporary social and economic conditions and the fact that the respondent is making some payments for the benefit of the minor child for future exigencies and that the child is of growing age and presently about 10 years old and school going, I deem it fit to grant Rs.30,000/- per month as pendent-lite maintenance to the petitioner for the minor son of the parties from the date of filing of the application till pendency of the case alongwith litigation expenses @ Rs.11,000/- to the petitioner. Non-applicant/respondent is directed to pay the pendent lite maintenance by the 10th day of each following English calendar month”

(Emphasis Supplied)

8. 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)

9. After some hearing in the matter, the counsel for the appellant-husband submits that the sum of Rs.30,000/- awarded by the Family Court towards maintenance for minor child is far and excess for the day to day needs of the child. He submits that while he does not oppose the quantum which has been fixed, he submits that out of the sum of Rs.30,000/-, a sum of Rs.20,000/- should be used for the benefit of the child and Rs.10,000/- per month should be kept in a Fixed Deposit for the benefit of the child.
10. We find the suggestion of the appellant to be fair and just. Accordingly, the order dated 18.11.2016 of the Family Court is modified to the extent that the appellant shall pay a sum of Rs.30,000/- towards maintenance of the minor child, out of which Rs.10,000/- shall be kept in a Fixed Deposit and, every three months the proof of deposit shall be filed in the Family Court.
11. With this modification, the present appeal and all pending applications are disposed of.

G.S.SISTANI, J.

JYOTI SINGH, J.

MARCH 28, 2019

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