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

% *Date of Judgment: 18th February, 2019*

+ **MAT.APP.(F.C.) 26/2017**

D S P P

..... Appellant

Through: Mr. Ranjan Kumar and Mr. Shyam
Prakash, Advocates

versus

R & A.

..... Respondents

Through: Mr. A.K. Pandey, Advocate

CORAM:

**HON'BLE MR. JUSTICE G.S. SISTANI
HON'BLE MS. JUSTICE JYOTI SINGH**

G.S. SISTANI, J. (ORAL)

CM.APPL 7219/2018(restoration)

1. This is an application filed by the applicant/appellant seeking restoration of the appeal which was dismissed on the ground of non-prosecution on 19.09.2017.
2. Heard.
3. For the reasons stated in the application, the order dated 19.09.2017 is recalled. The appeal is restored to its original number and file.
4. The application stands disposed of.

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5. Challenge in this appeal is to the order dated 14.09.2016 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’) seeking maintenance for herself and her minor son along with the litigation expenses. By virtue of the said order, interim maintenance of Rs. 16,000/- per month was awarded only to the minor son, who was about 5 and a half year at the time of the passing of the impugned order.

6. The necessary facts required to be noticed for the disposal of this appeal are that the marriage between the parties was solemnized on 24.12.2008 at Delhi as per Hindu rites and ceremonies. A son was born out of the said wedlock on 09.03.2011, who is in the care and custody of the respondent/wife. As per the appellant, the parties have been residing separately since 19.09.2015. The petition seeking divorce under Section 13 (1)(ia) of HMA was filed on 18.08.2015 which is pending.
7. Learned counsel appearing for the appellant/husband submits that the Family Court has erred in not taking into account the deductions in the salary of the appellant herein while fixing the maintenance. Learned counsel has strenuously urged that in addition to the Income Tax, the appellant is also paying for the home loan, personal loan, insurance premium and also bearing his personal expenses and thus, the counsel prays that the appellant is not in a position to pay Rs.16,000/- per month for the maintenance of the minor child. Counsel for the appellant also submits that the Family Court has failed to take note of the fact that the respondent/wife is also employed as a Staff Nurse with G.B. Pant Hospital and earning Rs.58,000/- per month.
8. Counsel for the respondent/wife has opposed this appeal on the same ground as pleaded before the learned Family Court and submits that

the appellant/husband is a Medical Officer working at the rank of Major in the Indian Army and is currently posted at Ahmedabad. His salary is about Rs. 1,50,000/- per month but despite this, he has not paid even a single penny for the maintenance of the minor son in compliance of the impugned order. The counsel further submits that the appellant/husband is in the arrears of the maintenance and the execution petition is already pending before the learned Family Court for the compliance of the said order. In this backdrop, the counsel for the respondent/wife submits that there is no infirmity in the view taken by the Family Court and prays for the dismissal of the appeal.

9. We have heard the learned counsels for the parties and carefully examined the order of the Family Court. The relevant para 10 of the impugned order dated 14.09.2016 reads as under:

“10. Admittedly, the respondent/applicant is employed as staff nurse with G.B. Pant Hospital and earning Rs. 58,000/- pm and therefore, the same is found sufficient for maintaining herself as per the status of petitioner/non-applicant. However, the respondent/applicant has responsibility of child master Arshit who is school going child and the petitioner/non-applicant is admittedly having higher earnings than the respondent/applicant and holding a respectable position of Major in the Indian Army, hence liable to pay maintenance to the respondent/applicant for the child master Arshit in custody of respondent. It is worthwhile to note that during the course of hearing, the respondent/applicant had offered to handover the custody of the child to petitioner/his father who is SPA holder, but they declined to take custody of the child master Arshit.”

(Emphasis Supplied)

10. It is not disputed before us that both the parties are working. The respondent/wife is bringing up the minor son and looking after his

daily needs. We may note that the learned Family Court has taken into account the income of the appellant/husband as higher to the earnings of the respondent/wife. The appellant/husband is holding a respectable position of Major in the Indian Army. The Family Court has also considered the salary of the respondent/wife which is Rs.58,000/- per month. The Family Court has fixed maintenance Rs.16,000/- per month for the minor child. In our view, there is no infirmity in the order of the Family Court which requires interference.

11. The present appeal is devoid of any merit. Resultantly, the appeal stands dismissed.

CMs.APPL 6712/2017 & 6714/2017

12. The applications stand dismissed, in view of the judgment passed in the appeal.

G.S.SISTANI, J.

JYOTI SINGH, J.

FEBRUARY 18, 2019
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