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

+ **MAT.APP.(F.C.) 102/2020 and CM APPL. 21579-79/2020**

DINESH KUMAR Appellant

Through: Mr.Girish Kumar, Advocate along
with appellant in person.

versus

REENA RANI Respondent

Through: Ms.Kirti Gupta, Advocate

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% **04.09.2020**

HEARD THROUGH VIDEO CONFERENCING.

1. The present appeal is directed against an order dated 04.07.2020, passed by the learned Judge, Family Court, Dwarka, New Delhi, disposing of an application moved by the respondent/wife under Section 24 of the Hindu Marriage Act, praying *inter alia* for maintenance for herself and the two minor children (daughter aged 8 years and son aged 6 years) in her care and custody. Under the impugned order, being mindful of the fact that the appellant, who is serving in the CRPF, is getting a net salary of Rs.62,804/- and he has been paying rent for an accommodation in Delhi, where the respondent and the children are residing, based on a settlement arrived at between the parties before the Family Court earlier hereto i.e., on 05.03.2018, credit for the said amount has been given to the appellant and the learned Family Court has held that the net disposable income of the

appellant would be taken as Rs.53,000/- per month. The appellant has been held as entitled to two parts from the monthly income of Rs.53,000/- and the respondent and the two children to the remaining three parts, which comes to Rs.31,000/- per month. The said amount has been fixed as *pendentelite* maintenance for the respondent and the children during the pendency of the divorce petition filed by the appellant against the respondent. The Family Court has directed the appellant to clear the arrears of the maintenance payable w.e.f. April, 2019, the date the maintenance application was moved by the respondent, within a period of five months.

2. Mr.Girish Kumar, learned counsel for the appellant has tried to find fault in the impugned order by stating that the respondent is an educated lady having done a B.Ed. course and therefore, is qualified enough to be gainfully employed and that despite a submission made on behalf of the appellant before the learned Family Court that she is taking tuitions at home and earning a sum of Rs.25,000/- per month, the said fact has not been taken into consideration while passing the impugned order. He further states that the appellant has been paying a sum of Rs.11,000/- per month to the respondent under the settlement arrived at between the parties on 05.03.2018, of which credit has not been given to the appellant.

3. We may note that no credit can be given to the appellant for the amount that he may have paid to the respondent for the period prior to April, 2019 as the application for maintenance has been moved by the respondent only in April, 2019. However, credit for the amount paid by the appellant to the respondent for the period thereafter, would be available to him while calculating the arrears of maintenance. As for the submission made by learned counsel for the appellant that the respondent/wife is gainfully

employed, he has not able to place on record any document to substantiate his claim that she is earning and in the absence of any cogent material placed before the Family Court, it has been rightly concluded that only an empty plea has been taken by the appellant that the respondent is gainfully employed, without backing the assertion with relevant documents.

4. Learned counsel for the appellant states that his client is due for a posting in Delhi and when he returns to Delhi, his perks are likely to reduce and as a consequence, the disposable income in his hands may also reduce. In such an eventuality, he can approach the Family Court for bringing on record the changed circumstances but this cannot be a ground available to him to assail the impugned order.

5. Before dismissing the appeal, in the interest of justice, we have enquired from learned counsel for the parties as to whether they would be ready and willing to arrive at a onetime settlement with each other more so, since two small children are involved, who are in the care and custody of the respondent, subject to the appellant depositing the arrears of maintenance due and payable under the impugned order, in this court.

6. As the appellant is present in the virtual hearing, we have given some time to learned counsel for the appellant to interact with his client only to be told that the appellant does not have the resources to deposit any amount in court, much less pay the same to the respondent. It is noteworthy that by now, the appellant ought to have cleared at least some part of the arrears of maintenance since five months were granted to him to do so under the impugned order and two months have already expired. It is obvious that the appellant is only interested in buying time. We therefore see no reason to send the parties to mediation at present. If the appellant is serious about

resolving the dispute with the respondent, he can always approach the learned Family Court, where his divorce petition is pending with such a request.

7. The present appeal is dismissed in *limine* as meritless alongwith the pending applications.

HIMA KOHLI, J

SUBRAMONIUM PRASAD, J

SEPTEMBER 4, 2020

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