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

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Judgment delivered on: 10.05.2023

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MAT APP. (F.C.) 157/2019

PALLAVI DEVA & ANR.

.... APPELLANT

versus

VIJAY SAXENA

..... RESPONDENT

Advocates who appeared in this case:

For the Appellant:

Mr. Sonal Sinha, Advocate.

For the Respondent:

Rajeev Saxena, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellant impugns order dated 24.04.2019, whereby the Family Court has directed that an amount of Rs.1,60,000/- received by the appellant, pursuant to the settlement dated 03.12.2016, be adjusted.
2. Learned counsel for the appellant submits that said amount could not have been adjusted as the amount was for a period prior to

the date of filing of the application seeking maintenance. He further submits that said amount was towards the maintenance of the child and could not have thus been adjusted on account of any alleged conduct/misconduct of the appellant.

3. Learned counsel further submits that the Family Court has erred in not awarding interim maintenance from the date of the application i.e., 31.01.2018 and has erred in granting the same from the date of the order i.e., 16.08.2018.

4. Learned counsel appearing for the respondent submits that the Family Court has correctly adjusted the amount of Rs. 1,60,000/- for the reason that there was a holistic settlement between the parties, whereunder the respondent had agreed to pay the said amount as maintenance and the parties had agreed to obtain divorce by mutual consent. He submits that since appellant breached the terms of the settlement, she was disentitled to the said amount and consequently, the same was liable to be adjusted and has correctly been adjusted by the Family Court.

5. We are unable to accept the contention of the learned counsel for the respondent. Settlement agreement dated 03.12.2016, though records that parties have agreed to dissolution of marriage by mutual consent, however, with regard to the payment of maintenance it

records that the respondent had agreed to deposit a sum of Rs.40,000/- per month in the account of the appellant as maintenance for the child with effect from December, 2016 till he attains the age of 25 years.

6. It is not in dispute that the child is a special needs child. The amount of maintenance that was agreed to be paid was with regard to the maintenance of the child.

7. Pursuant to the said settlement, respondent paid an amount of Rs.1,60,000/- which was sent alongwith a legal notice dated 25.03.2017. Said legal notice sent by the advocate of the Respondent also reiterated that the said amount of Rs.1,60,000/- was being paid towards the maintenance for the child with effect from December, 2016 till March, 2017.

8. Since the agreement between the parties was that the amount shall be paid towards the maintenance of the child and the amount was also tendered towards maintenance of the child for the period from December, 2016 till March, 2017, there was no reason for the Family Court to adjust the said amount on account of any alleged conduct/misconduct of the appellant.

9. The amount having been paid towards maintenance of the child also could not have been adjusted towards a future claim of maintenance of the child.

10. Appellant had filed a petition on 31.01.2018 under Section 125 of the Code of Criminal Procedure Code, seeking maintenance for herself and the child.

11. On the said petition, an interim order was passed on 16.08.2018, directing payment of interim maintenance of Rs.25,000/- for the child, which was subsequently enhanced to Rs.30,000/- on 05.08.2022.

12. Said order dated 16.08.2018 granted interim maintenance to the appellant from the date of passing of the order and subsequently, the enhancement to Rs.30,000/- on 05.08.2022 was also from the date of the order dated 16.08.2018.

13. There is no reason apparent from the order dated 16.08.2018 as to why the maintenance has been awarded only from the date of the order and not from the date of the application.

14. Since the child is a special need child, we are of the view that it is a fit case where powers should be exercised under Order XLI Rule 33 Code of Civil Procedure to award interim maintenance at the rate fixed the Family Court i.e., Rs.30,000/- per month with effect from the date of the application i.e., 31.01.2018.

15. In view of the above, the appeal is allowed. The impugned

order dated 24.04.2019 is set aside and consequently, it is held that the respondent is held not entitled to adjust the said amount of Rs.1,60,000/-. Respondent is also directed to pay interim maintenance at the rate of Rs.30,000/- per month with effect from 31.01.2018 till 16.08.2018.

16. It is clarified that this order would be without prejudice to the prayer of the appellant seeking maintenance at a higher amount which is still pending consideration before the Family Court and the defence thereto of the respondent.

17. Appeal is allowed in the above terms.

18. *Dasti* under signature of the Court Master.

SANJEEV SACHDEVA, J

MAY 10, 2023
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MANOJ JAIN, J