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

% **Date of decision: 12th October, 2023**

+ **MAT. APP.(F.C.) 216/2023**

SUNITA

..... Appellant

Through: Mr. Ajay Bahl, Mr. N.K. Nangia &
Mr. Vikash Sharma, Advocates with
appellant in person.

versus

SANJAY KUMAR

..... Respondent

Through: Mr. Mukesh Gupta, Mr. Raghav
Gupta & Mr. Ishant Sharma,
Advocates with respondent in person.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CM APPL. 37258/2023 (Exemption)

1. Allowed, subject to all just exceptions.
2. Accordingly, the application is disposed of.

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3. **The present Appeal under Section 19 of the Family Courts Act, 1984** has been filed on behalf of the appellant against the Order dated 01.05.2023 passed by the learned Judge, Family Courts, North, Rohini Courts, Delhi, whereby the application filed by the appellant/wife under Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC"*) seeking enhancement of maintenance amount to Rs.18,000/- per



month under Section 24 of the Hindu Marriage Act, 1955 (*hereinafter referred to as "HMA"*), was dismissed.

4. **The facts in brief** are that the respondent/husband had filed a petition under Section 11 of the HMA for annulment of the marriage between the parties which was solemnized on 28.04.2009 at Bahadurgarh District, Haryana. The petition was allowed *vide* Order dated 29.11.2017 by the learned Judge, Family Court and the marriage was annulled.

5. The MAT.APP.(F.C.) No. 22/2018 was filed before this Court against the Order dated 29.11.2017. During the pendency of the petition for annulment, the learned Judge, Family Court *vide* Order dated 09.02.2015 disposed of the application under Section 24 of the HMA and granted *pendente lite* maintenance in the sum of Rs.18,000/- per month to the appellant/wife with the consent of the parties.

6. The appellant during the pendency of the Appeal before this Court, moved an application for enhancement of maintenance being CM Appl. 24551/2020 which was disposed of by this Court on 12.10.2020, giving liberty to the appellant/wife to approach the learned Family Court for seeking enhancement of interim maintenance *vide* Order dated 09.02.2015.

7. The learned Judge, Family Court took note of the fact that the marriage between the parties had been declared null and void *vide* the Judgment and Decree dated 29.11.2017 against which the Appeal was pending in this Court. It was observed that though the salary of the respondent/husband has increased since 2015 but he had got remarried and has his wife and two children from the second marriage in addition to his aged mother to take care of. Further, he was paying Rs.18,000/- per month for the maintenance of the appellant/wife and their son Prajesh. Further, the



interim orders were made under Section 24 of the HMA which were co-terminus with the pendency of the petition/appeal. The appellant/wife had already filed a petition under Section 125 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "CrPC"*) which is pending trial. The learned Judge, Family Court thus, concluded that there was no ground for enhancement of maintenance and thereby, dismissed the application.

8. Aggrieved, the present Appeal has been preferred by the appellant.

9. Submissions heard and record perused.

10. The marriage between the parties was annulled vide the Judgment dated 29.11.2017 under Section 11 of the HMA and the Appeal against the said Judgment has been dismissed by this Court *vide* separate Order today i.e. 12.10.2023. The interim maintenance of Rs.18,000/- per month has been offered by the respondent/husband which was accepted by the appellant and thus, with the mutual consent of the parties, interim maintenance at the rate of Rs.18,000/- per month was fixed under Section 24 of the HMA vide Order dated 09.02.2015.

11. The respondent/husband had submitted that though he was in the government job but on the complaint of the appellant/wife, he had been put under suspension in October, 2022 and his salary was substantially reduced. Though he has been reinstated recently, but his present salary is around Rs.1 lakh. Because of his increased liabilities and also the increase in Price Index, the enhancement of maintenance under Section 24 of the HMA is not justified.

12. Admittedly, the appellant/wife is a qualified lady having Post-Graduation Degree and professional qualification of M.A./B.Ed. She may



have chosen not to work but considering her qualifications, she definitely has an earning capacity which she may or may not choose to exercise.

13. The respondent/husband is in Government service and as per his submissions, his net salary is around Rs.1 lakh per month. He has his second wife and two children. In addition, he has also aged mother to take care of. Also, he is maintaining the appellant and her son Prajesh from their marriage and paying Rs.18,000/- per month. Also, as rightly observed by the learned Judge, Family Court, maintenance under Section 24 of the HMA is only *pendente lite* and the petition under Section 125 CrPC is still pending.

14. Considering the totality of circumstances, we find that there is no infirmity in the impugned Order disallowing the enhancement of maintenance to the appellant by the learned Judge, Family Court.

15. The Appeal is hereby dismissed.

16. The pending applications, if any, also stand disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 12, 2023
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