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

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Judgment delivered on: 20.04.2023

+ **MAT APP. (F.C.) 127/2021 & CM. APPL. 47389/2021**

SONAL AGGARWAL alias SONAL SHARMA APPELLANT

versus

VISHAL SHARMA

..... RESPONDENT

Advocates who appeared in this case:

For the Appellant: Mr. Jatin Rajput, Mr. Rajesh Kumar Jha and Mr. Varun Panwar, Advocates.

For the Respondent: Mr. Abhijit Mishra, Mr. Gaurav Singh and Mr. Saurav Singh, Advocates.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellant impugns order dated 06.02.2020, whereby the application of the appellant under Section 24 of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Act') has been dismissed solely on the ground that an order of maintenance has already been passed in the Domestic Violence petition. Family Court has held that once an order of maintenance has been passed by the concerned court

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in the domestic violence petition, there is no requirement of passing any further order on maintenance on the application under Section 24 of the Act and the wife can be paid maintenance only in one proceedings.

2. The judgment rendered by the Family Court is clearly contrary to the settled position of law that there is a distinction between the scope and power exercised by the two courts and merely because an order is passed under one statute does not disentitle the spouse from claiming maintenance under the other statute, however, the order passed in one proceedings has to be taken into account and the amount being paid thereunder is to be adjusted from the amount awarded under the other proceedings.

3. In *RD Vs. BD*, 264 (2019) *DLT 10 (DB)*, a Division Bench of this Court has held that as various statutes have been enacted to provide maintenance to the wife, it is nowhere the intention of the Legislature that once any order passed in either of the proceeding, said order would debar re-adjudication of the issue of maintenance in any other court.

4. Further, it may be noticed that the Family Court has placed reliance on the judgment of a single Judge of this Court in *Rachna Kathuria Vs. Ramesh Kathuria*, 173 (2010) *DLT 289* to refuse consideration of the application under Section 24 of the Act. The

Division Bench of this Court in *RD Vs. BD (supra)* has specifically held that the said judgment is not good law and has been overruled.

5. In that view of the matter, the impugned order clearly cannot be sustained and is accordingly set aside.

6. Learned counsel for parties inform that the divorce proceedings are at the stage of final hearing and are listed on 24.04.2023.

7. In view of the above, the matter is remitted to the Family Court to consider the application under section 24 of the Act afresh. Learned counsel for parties submit that they shall be filing their affidavit of income in terms of the judgment of the Supreme Court in *Rajnish Vs. Neha (2021) 2 SCC 324* before the Family Court on the next date itself. The statement is taken on record.

8. In case the divorce proceedings culminate and the Family Court is passing an order under Section 25 of the Act, the Family Court shall consider the application under Section 24 for the period between the filing of the application under Section 24 of the Act till the final disposal and while passing an order under Section 25 factor in the same separately.

9. The appeal is allowed in the above terms. Family Court shall expedite the proceedings and endeavour to conclude the same preferably within a period of three months from today.

10. Dasti under signature of the Court Master.

SANJEEV SACHDEVA, J

APRIL 20, 2023
NA

VIKAS MAHAJAN, J

