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

% *Date of decision: 16th August, 2023*

+ **MAT.APP.(F.C.) 198/2022 & CM APPL.53993/2022**

YOGITA RELHAN

..... Appellant

Through: Mr. Prashant Ghai, Ms. Simantini
Paul & Mr. Yasharth Jayant Lai,
Advvs.

versus

KARAN TANEJA

..... Respondent

Through: Mr. Satish Aggarwala, Mr. Rajat
Bhatia, Mr. Anish Aggarwala, Mr.
Anubhav Tyagi, Mr. Nishant
Sharma & Mr. Mathew M. Philip,
Advvs. 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. 53994/2022 (exemption)

1. Allowed, subject to all just exceptions.
2. The application is accordingly disposed of.

MAT.APP.(F.C.) 198/2022

3. The appellant by way of present appeal under Section 19 of the Family Courts Act, 1984 has challenged the Order dated 03.09.2022 of Principal Judge, Family Court vide which the Order dated 07.02.2017 granting maintenance in the sum of Rs.17,500/- to the respondent has not



only been recalled, but directions have also been issued to refund the entire amount of maintenance that she has received since August, 2016, within nine months in three instalments.

4. The appellant had filed a petition for dissolution of marriage under Section 13 (1)(ia) of the Hindu Marriage Act, 1955. During the pendency of the petition, while considering the application under Section 24 of HMA for grant of interim maintenance to the appellant, the respondent consented to give an amount of Rs.17,500/- per month as *pendent lite* maintenance w.e.f 09.09.2015, the Order for payment of interim maintenance dated 07.02.2017 was made accordingly. The respondent continued to pay maintenance till October, 2019.

5. The respondent herein then moved an application dated January, 2020 for alternation/ cancellation of maintenance Order dated 07.02.2017. It was stated in the application that the appellant herein was working at Dubai since August, 2016 and was not in India when the petition was filed on 07.02.2017. She misled the Court as she, in her income affidavit stated that she had a monthly expenses of Rs.31,000/- per month. Though as per her Income Tax Return for the Assessment Year 2013-14, her annual income was Rs.1,81,534/-. However, cash in the sum of Rs.89,990/- was shown deposited in her Axis Bank from an unknown source. Similarly, in the Income Tax Return for the Assessment Year 2014-15 her annual income was shown as Rs.2,44,642/- but again there was a deposit of Rs.80,500/- in her Axis Bank and credit entries by ECS of more than Rs.2 lakhs from unknown source. Similar was the reflection of income in the Income Tax Return for the Assessment Year 2015-16.

6. It was claimed that the petitioner had declared that she had taken a



loan of Rs.1,65,000/- from the friends, but it was not indicated whether the loan was received in cash or cheque. The petitioner had disclosed her Fixed Deposits in the sum of Rs.91,000/-, though her Axis Bank Statement reflected that her Fixed Deposits were of Rs.3,90,000/- and she had also given Rs.1,30,000/- as loan/ gift to Karan Relhan, her brother, which was not disclosed.

7. It was submitted that the petitioner/appellant was having handsome income and earning hourly payment from consultancy work, being a qualified and experienced accountant and earning approx.12,000/- AED as she was settled in Dubai. It was further submitted that interim maintenance Order dated 07.02.2017 may be cancelled or modified. Subsequently, an application under Order VI Rule 17 CPC dated NIL apparently has been filed to amend the earlier application to claim refund of the maintenance amount that has been given to the petitioner/ appellant, till date.

8. The learned Principal Judge, Family Court vide impugned Order observed that the petitioner had not specifically denied that she was working in Dubai since August, 2016 and was not in India, when the petition came up for hearing on 07.02.2017. She was under a duty to have specifically mentioned these facts. Furthermore, there was no specific denial that she was a qualified and experienced Consultant who was earning approx. 12000 AED which is equivalent to Rs.2,40,000/- per month from consultancy. She also did not specifically denied her C.V. published at Bayt.com, showing her working as Senior Account since August, 2016 onwards. It was observed that the petitioner had kept the respondent as well as the Court in dark about her working in UAE since



August, 2016. Consequently, the Order dated 07.02.2017 granting *pendent lite* maintenance was withdrawn and the petitioner was directed to refund the entire amount of maintenance received by her from the respondent since August, 2016 within nine months in three instalments. Aggrieved by the said Order, the present appeal has been preferred.

9. Submissions heard.

10. The perusal of the record shows that the Order dated 07.02.2017 granting *pendent lite* maintenance in the sum of Rs.17,500/- per month was a “*consent order*”, wherein the respondent himself had volunteered to pay Rs.17,500/- per month to the appellant w.e.f 09.09.2015. The Order was not made on merits by considering the income of the respective parties or their expenditure. Though during the course of the arguments it was vehemently argued on behalf of the respondent that the appellant had failed to disclose that she was settled in Dubai or to give her true statement of earnings and a fraud had been played by her, but no such averment of alleged fraud was made in the application vide which the cancellation of Order dated 07.02.2017 was sought. The impugned Order granting interim maintenance dated 07.02.2017 was not on merits and therefore, the question of concealment of facts does not arise. A Consent Order could not have been modified on the specious ground of there being concealment of facts.

11. The learned Principal Judge, Family Courts fell in error by accepting the contentions raised by the respondent that considering the employment and the earnings of the appellant, the order dated 07.02.2017 be recalled. There is no ground whatsoever for recalling the Order dated 07.02.2017 or for directing the refund of the maintenance amount that has



been received by the appellant till date.

12. The respondent may have sought modification of this Order for the future but definitely he cannot seek cancellation of the Order dated 07.02.2017, which was made with the consent of the parties. The Appeal is therefore, allowed and the impugned Order dated 03.09.2022 directing refund of the entire amount of maintenance received from the respondent since August, 2016 is hereby set aside.

13. The pending application also stands disposed of accordingly.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 16, 2023

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