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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 09.02.2024

+ **MAT.APP.(F.C.) 13/2024, CM Nos.1827/2024 & 7229/2024**

PUNEET KUMAR

..... Appellant

Through: Mr Vikas Sharma with Mr Abhishek
Semwal, Advs.

versus

ANJU KUMARI & ANR.

..... Respondents

Through: Mr Shekhar Aggarwal with Mr Rahul
Mohod and Mr Manoj K Sankar,
Advs.**CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):**

1. We had heard the learned counsel for the appellant at great length when the matter was listed before the court for the first time on 11.01.2024.
2. After hearing the learned counsel for the appellant, we had recorded the core issue which arose in the instant appeal. For convenience, the relevant parts of the order dated 11.01.2024 are extracted hereafter:

"2. Via this appeal the appellant seeks to assail the orders dated 26.08.2023 and 23.12.2023 passed by the learned Principal Judge, Family Courts, East District, Karkardooma Courts, Delhi.

3. The only issue that is raised by the appellant/husband in the instant appeal concerns the date from which arrears pertaining to maintenance vis-à-vis the son had to be paid.

4. The record shows that in the first round the Family Court had granted maintenance only for the son @ 5,000/- per month. This is reflected in the order dated 09.12.2021.

5. The record also discloses that the respondent no.1, being aggrieved, carried the matter to this court by way of an appeal. The coordinate bench



via judgment dated 13.04.2022 declined the prayer made by the respondent no.1/wife that maintenance ought to have been granted to her as well.

5.1. However, the coordinate bench enhanced the maintenance payable to the son by the appellant from Rs.5,000/- to Rs. 15,000/- per month. The operative directions concerning this aspect are contained in paragraph 13 of the order dated 13.04.2022. For the sake of convenience, the relevant paragraph is extracted hereafter:

*“13. The impugned order to the extent of denying the pendente lite maintenance to the appellant cannot be faulted. The appellant, however, has also sought maintenance for her minor son, who is now about five years old. It is the responsibility of both the parents to give an upbringing to the child as per their standard and status. Considering that the respondent is a Branch Manager, Scale-II in Allahabad Bank and also his assets and background, **maintenance of son Master Diyan is enhanced to ₹15,000/- per month, (inclusive of ₹5,000/- per month that he is already getting under Section 125 Cr. P.C.) from the 01st April, 2022 till the disposal of the divorce petition.**”*

[Emphasis is ours]

6. Dissatisfied, the respondent carried the matter in appeal to the Supreme Court. The Supreme Court, while allowing the appeal, interfered with, it appears, the judgment of the coordinate bench of this court dated 13.04.2022, to the extent it had rejected the plea of respondent no.1/wife for grant of maintenance to her as well. This aspect is evident on perusal of paragraphs 6 to 8 of the judgment dated 28.11.2022 rendered by the Supreme Court. For the sake of convenience, the relevant paragraphs are set forth hereafter:

*“6. In view of the above, **we are of the considered view that ends of justice would be adequately met if the respondent – husband is directed to pay a sum of Rs.15,000/- per month to the appellant – wife, in addition to the amount directed to be paid by the High Court, as interim maintenance for the child, from the date she moved an application in that regard.** Ordered accordingly. The respondent is directed to pay the arrears of maintenance within a period of three months. However, the interim maintenance shall be paid on or before 10th day of every English calendar month.*

7. The observations made hereinabove shall have no bearing on the proceedings, if any, pending regarding grant of regular maintenance.

8. The appeal is allowed accordingly.”

[Emphasis is ours]



7. *Prima facie*, we are of the view that the Supreme Court did not interfere with that part of the judgment whereby the coordinate bench had directed the enhancement of maintenance *qua* the son from Rs.5,000/- to Rs. 15,000/- per month, albeit w.e.f. 01.04.2022.

8. We may note that when the matter was taken up by the Family Court for the purposes of calculating the arrears that had to be paid, the issue we have adverted to hereinabove, came up for consideration. This is evident upon perusal of the order dated 26.08.2023.

8.1. The Family Court took the view that the appellant/husband has to pay arrears both *qua* the respondent no.1/wife and the son from the date of the application.

9. The record shows that the appellant had approached this court by way of an appeal against order dated 26.08.2023, which was withdrawn with liberty to take steps before the Family Court. In this context, our attention is drawn to the order dated 26.09.2023 passed in MAT.APP.(F.C.) 290/2023.

10. Counsel for the appellant says that the review petition preferred *qua* the order dated 26.08.2023 was rejected by the Family Court via order dated 23.12.2023. The Family Court reiterated its view taken on 26.08.2023.

11. We are informed by the learned counsel for the appellant/husband, on instructions of the appellant/husband, who is present in court, that arrears both *vis-à-vis* the wife and the son have been cleared, in consonance with the stand taken before us.

12. According to us, the matter requires examination.

13. Issue notice to the respondents via all modes, including e-mail.

14. List the matter on 19.01.2024.”

3. Upon return of notice, i.e., on 19.01.2024, we were told that a review petition had been filed before the Supreme Court. Accordingly, a direction was issued to the counsel for the appellant to place the review petition on record.

3.1 Counsel for the appellant has thus placed the said review petition on record. A copy of the review petition has been made available to the counsel for the respondent.

4. Based on the averments made in the review petition, it is contended that the only aspect *qua* which review was sought concerned grant of maintenance to respondent no.1 i.e., wife. It is submitted that there was



nothing stated in the review petition with regard to the order passed by the Division Bench on 13.04.2022 as regards enhancement of maintenance *vis-à-vis* the son/respondent no.2 and the date from which it was ordered to be paid.

5. Counsel for the respondent submits that in the Special Leave Petition (SLP), a contention was raised that the enhanced maintenance qua the son i.e., respondent no.2 should be paid from the date of the application.

6. We have carefully perused the order passed by the Supreme Court. As noted by us on 11.01.2024, the Supreme Court allowed the SLP and varied the judgment of the Division Bench dated 13.04.2022 only to the extent it had declined the prayer of grant of maintenance to respondent no.1 i.e., wife.

7. Given this position, and respectfully following the judgment of the Supreme Court, we are inclined to allow the appeal and set aside the impugned orders assailed in the appeal i.e., orders dated 26.08.2023 and 23.12.2023 passed by the learned Principal Judge.

7.1 In effect, insofar enhanced maintenance of Rs.15,000/- qua respondent no.2/son is concerned, the liability to pay the same shall trigger only from 01.04.2024.

8. The appeal is disposed of, in the aforesaid terms.

9. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

AMIT BANSAL, J

FEBRUARY 9, 2024

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