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

+ CRL.REV.P. 131/2022 & CRL.M.A. 4358/2022

MOHAN LAL

..... Petitioner

Through: Ms. Juhi Arora, Adv. (VC)
Petitioner in person

versus

BARKHA

..... Respondent

Through: Ms. Sunita Arora, Adv.
(DHCLSC) with respondent.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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10.05.2024

1. This petition has been filed by the petitioner under Section 397 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') challenging the order dated 06.10.2021 (hereinafter referred to as the 'Impugned Order') passed by the learned Principal Judge, Family Courts, South-West District, Dwarka Courts, Delhi (hereinafter referred to as the 'Family Court') in Maintenance Petition filed by the respondent herein under Section 125 of the Cr.P.C. being MT No.596/2019, titled as *Barkha & Ors. v. Mohan Lal*, directing the petitioner to pay maintenance of a sum of Rs.2,500/- per month to the respondent, and Rs.2,500/- each to the two minor children. It has been further directed that maintenance amount would be increased by 10% every two years from the date of the order.

2. The limited grievance of the petitioner against the Impugned Order is that the learned Family Court has failed to take into account the earlier order dated 20.03.2019 passed by the learned Metropolitan Magistrate, Mahila Court-02, Dwarka Courts, Delhi (in short, 'MM')



in CC Case No.23765/2017 (in a complaint filed under Section 23 of The Protection of Women from Domestic Violence Act, 2005) awarding *interim* maintenance of Rs.3,000/- per month towards the maintenance of the two children, while holding that the respondent herself is not entitled to any maintenance.

3. The learned counsel for the respondent submits that the above order was brought to the notice of the learned Family Court. However, on perusing the Impugned Order, I find that there is no mention of the order passed by the learned MM, leave alone any discussion of the said order.

4. In ***Rajnes v. Neha***, (2021) 2 SCC 324, the Supreme Court, taking note of the multiple jurisdictions that can be invoked by a wife for claiming maintenance and in order for the family courts to overcome such conflicting orders, directed as under:

“128. To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. We direct that:

128.1. (i) *Where successive claims for maintenance are made by a party under different statutes, the court would consider an adjustment or set-off, of the amount awarded in the previous proceeding(s), while determining whether any further amount is to be awarded in the subsequent proceeding.*

128.2. (ii) *It is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding.*



128.3. (iii) If the order passed in the previous proceeding(s) requires any modification or variation, it would be required to be done in the same proceeding.”

5. In the present case, as the order dated 20.03.2019 has not been taken note of by the learned Family Court while passing the Impugned Order, in my opinion, the Impugned Order cannot be sustained. The same is, accordingly, set aside.

6. As the Impugned Order has been set aside on the ground that the earlier order has not been taken into account, the matter is remanded back to the learned Family Court to expeditiously decide on the application filed by the respondent claiming maintenance. The application be decided within a period of two months of the first listing before it.

7. The parties are directed to appear before the learned Family Court on 30th May, 2024.

8. As the petitioner himself is seeking benefit of the order dated 20.03.2019 for having the Impugned Order set aside, the petitioner must comply with the direction contained in the order dated 20.03.2019 and clear all the arrears based thereon within a period of eight weeks from today after adjusting the amount already paid.

9. With the above direction, the present petition and the pending application are disposed of.

10. *Dasti.*

NAVIN CHAWLA, J

MAY 10, 2024/Arya/ss

Click here to check corrigendum, if any