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P J vs.r J

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Court : Delhi

Decided On : Jan-24-2019

Appellant : P J

Respondent : R J

Advocate for Pet/Ap. : Ms. Jain

Judgement :

$~4 * % IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Judgement:

24. h January, 2019 + MAT.APP.(F.C.) 129/2018 P J R J CORAM: ..... Appellant Through Ms. Neha Jain, Advocate versus Through Ms. Sumita Hazarika, Advocate ..... Respondent HON'BLE MR. JUSTICE G.S. SISTANI HON'BLE MS. JUSTICE JYOTI SINGH G.S. SISTANI, J.

(ORAL) 1. The appellant is aggrieved by the order dated 08.03.2018 passed by the Family Court on an application filed by the respondent/wife under Section 26 of the Hindu Marriage Act seeking maintenance for the son, who is a child with special needs. The Family Court has awarded a sum of Rs.5,000/- per month to be paid to the respondent (child) in addition to the expenses being incurred by the appellant as claimed by him towards household, medicines, etc.

2. Ms. Jain, learned counsel for the appellant submits that it is not in dispute that the appellant is a visually impaired person since 2001, although he continued to carry on his business with his disability, but since 2013 he has no source of

livelihood as his business has shut down. Learned counsel has strongly urged before this Court that the appellant is living on the borrowed money from his real sister, who is MAT.APP.(F.C.)129/2018 Page 1 of 3 supporting him by paying Rs.30,000/- per month which amount is being utilized for his own upkeep and for other household expenses. It is also pointed out that the parties are residing in the house which belongs to the appellant and, additionally, the respondent is a working lady. It is thus, submitted before us that the appellant is not in a position to bear an additional burden of Rs.5,000/- with no source of any income.

3. Learned counsel for the respondent submits that there is no infirmity in the order passed by the Family Court. The appellant is, in fact, concealing his true income as it is not reasonably accepted that the married sister would support her brother by regularly paying Rs.30,000/- per month as claimed by him. It is also submitted that the appellant is irregular in making payments and the wife, in addition to working, has to look after the medical expenses of her son with special needs without any support from the appellant.

4. We have heard the learned counsels for the parties and examined the order passed by the learned Family Court.

5. While the factual aspect with regard to the appellant being visually impaired and the child being with special needs is not disputed, but what is disputed is that the appellant is surviving on the amounts received by him from his sister. Counsel for the respondent has highlighted that no material was placed before the Family Court to show that the appellant has no source of livelihood or that he is dependent on his sister(wrongly typed as brother in the order of the Family Court). Reading of the order would show that no document was placed on record by the appellant in support of this contention, MAT.APP.(F.C.)129/2018 Page 2 of 3 while it is the case of the wife that the husband has been carrying on his business as he was in the past. Ms. Jain, learned counsel for the appellant submits that regular amounts is being deposited in the bank account of the appellant by his sister and is being withdrawn by him. We find that there is no statement or affidavit of the sister to support the averments made by the appellant, more particularly, taking into account that the respondent is a working lady and is looking after the child as

well, although it is not disputed that payment with regard to electric expenses and some other expenses are also borne by the appellant.

6. Taking into consideration the facts of the present case, we find no grounds to interfere with the order passed by the Family Court. However, as prayed, we grant an opportunity to the appellant to move an application before the Family Court in case of either change of circumstances or in case additional documents are available with him.

7. The appeal is disposed of in above terms. CM.APPL222042018(stay) 8. The application also stands disposed of in view of the order passed in the appeal. G.S.SISTANI, J.

JYOTI SINGH, J.

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