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

% Judgment delivered on: 14.05.2019

+ CRL.REV.P. 737/2015 & CrI.M.A.16652/2015

SOURAV SHARMA Petitioner

versus

NEETU SHARMA Respondent

Advocates who appeared in this case:

For the Petitioner : Mrs. Mani Mittal and Mr. Pratush Mittal, Advs.

For the Respondent : Ms.Bharti Sharma & Mr.S.K.Sharma, Advs.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 28.07.2015 whereby the Appellate Court has dismissed the appeal of the petitioner on the ground that petitioner has failed to deposit the entire arrears of maintenance despite several opportunities.

2. Appellant has filed an appeal impugning order dated 10.11.2014, whereby Trial Court had directed the petitioner to pay monthly maintenance of Rs.35,000/- per month. Petitioner failed to pay the said amount and coercive steps were sought to be taken by the Trial Court.

3. Impugning the said order, petitioner filed an appeal before the Appellate Court which was dismissed by the impugned order.
4. The Appellate Court in the impugned order dated 28.07.2015 has held as under:-

“28.07.2015

At 10:10 AM

Present: Appellant in person.

Appellant states that his counsel is not available due to strike of lawyers and he had not been able to arrange the arrears of maintenance as per direction given by this Court.

*This Court had given direction to the appellant on the first date of hearing i.e. on 02.01.2015 that keeping in view the directions given by Delhi High Court in **Rajeev Preenja v. Sarika, 159 (2009) DLT 616**, he shall deposit the complete arrears or maintenance before this Court and compliance of this direction would be pre condition to hear his appeal on merits. Since 02.01.2015 till date, appellant was given time to comply with such direction, but he has failed to do so. In these circumstances, appeal is dismissed for non compliance of orders.*

File be consigned to record room, as per rules and a copy of this order be sent to trial court.”

5. In Rajeev Preenja (Supra) a learned Single Judge of this Court had held that the appellant/husband should be required to deposit the complete arrears of interim maintenance before the revisional remedy

should be entertained.

6. Another Single Judge of this Court in ***Brijesh Kumar Gupta vs. Shikha Gupta & Anr, 2015 SCC online Del.7086*** had taken a different view.

7. Noticing the difference of opinion in the judgments rendered by two learned Single Judges, the issue was referred to a larger bench.

8. A Division Bench of this Court in ***Sabina Sahdev & Ors vs. Vidur Sahdev*** vide judgement dated 09.07.2018 in CrI.M.C.878/2018 has answered the reference *inter alia* holding as under:-

“30. Thus, we answer the reference by holding that the general direction issued in Rajeev Preenja (supra) in paragraphs 15, 16 and 20 are not sustainable. The said directions could not have been issued by the learned Single Judge as they seek to curtail the statutory remedy of revision available under Section 399 read with Section 401 of the Cr.P.C, and of appeal under Section 29 of the DV Act, against orders granting interim maintenance under Section 125 Cr.P.C. and Section 23 of the DV Act respectively. The direction in question over steps into the legislative field, which was impermissible for the Court to do. We agree with the view taken by the learned Single Judge in Brijesh Kumar Gupta (supra), that there cannot be an absolute rider that the entire maintenance amount, as granted by the Trial Court, should be deposited prior to the entertainment of the statutory remedy, because it would leave the remedy of statutory revision/appeal illusory. Accordingly, we hold that a revision under Section 399 read with Section 401 Cr.P.C. and an appeal under Section 29 of the DV Act, against the order

granting maintenance under Section 125 Cr.P.C. and under Section 23 of the DV Act respectively, would be maintainable, and would be entertained and heard without any pre-condition of deposit of the arrears of maintenance as ordered by the Ld. MM. We further hold that the pendency of such a Revision or Appeal- as the case may be, shall not operate as a stay of the operation of the order granting interim maintenance. The reference is answered accordingly.”

9. As per the judgment of the Division Bench in *Sabina Sahdev (Supra)*, in case the amount as directed by the Revisional/Appellate Court is not deposited, a revision under Section 399 read with Section 401 Cr.P.C and an appeal under Section 29 of the DV Act against the order granting maintenance under Section 125 Cr.P.C and Section 23 of the DV Act respectively, would be maintainable and would be entertained and heard without any pre-condition of deposit of the arrears of maintenance as ordered by the MM.

10. The Division Bench held that mere pendency of the revision or an appeal, as the case may be, shall not operate as stay of the operation of the order granting interim maintenance.

11. The Division Bench has held that appeal or revision cannot be dismissed solely on the ground of failure to pre deposit the maintenance amount and the same would have been decided on merits.

12. The Appellate Court by the impugned order has dismissed the

appeal solely on the ground of failure to pre deposit the maintenance amount which is contrary to the law as laid down in *Sabina Sahdev (Supra)*.

13. In view of the above, impugned order dated 28.07.2015 is not sustainable and is accordingly set aside. The appeal is restored to its original number.

14. Parties shall appear before the concerned Additional Sessions Judge, Shahdara District, Karkardooma Courts, Delhi for directions on 17.07.2019.

15. Petition is allowed in the above terms.

16. Order *Dasti* under signatures of the Court Master.

MAY 14, 2019
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SANJEEV SACHDEVA, J