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

% Judgment delivered on: 01.03.2023

+ MAT.APP.(F.C.) 62/2023

RAJIV KUMAR YADAV Appellant

versus

MANJU DEVI Respondent

Advocates who appeared in this case:

For the Petitioner: Mr Iqbal Shamsi, Advocate.

For the Respondent:

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL. 10003/2023

1. Allowed, subject to all just exceptions.

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2. Appellant impugns order dated 13.01.2023, whereby the application of the appellant under Section 25 of the Hindu Marriage Act, 1955 ('the Act') seeking modification of final judgment dated 13.07.2017 has been dismissed.

3. Appellant had filed a petition seeking divorce from the

respondent-wife on the ground of desertion. Said petition was allowed vide judgment dated 13.07.2017.

4. With regard to permanent alimony, the appellant was directed to pay a sum of ₹2,500/- to each of the children for first five years and, thereafter, ₹3,500/- for another five years and, thereafter, ₹5,000/- each till both the children got married or became financially independent.

5. The elder daughter is the daughter of the respondent from her first marriage. The younger daughter is the daughter of the parties born out of this wedlock. The person to whom respondent had been earlier married, had expired and was also a member of the Armed Forces.

6. Admittedly, appellant has been paying the maintenance in terms of the judgment dated 13.07.2017 for both the daughters. Subject application under Section 25(2) of the Act was filed on 24.08.2022 contending that appellant has got to know that the elder daughter has been shown as a dependent in Part-II Order issued by the Army Authorities wherein in the Family Details, the daughter is shown as the daughter of the late first husband of the respondent as a dependent family member.

7. Subject application has been dismissed by the Family Court holding that there is no change in circumstances after the passing of the judgment dated 13.07.2017.

8. Section 25 of the Act stipulates that the court while passing a decree or any time subsequent thereto, on an application made to it either by the husband or the wife, may make an order that respondent shall pay to the applicant, maintenance and support such gross sum or such monthly or periodical sum not exceeding the life of the applicant. Section 25(2) of the Act stipulates that if the court is satisfied that there is a change in the circumstance of either party at any time after the order has been made under Section 25(1) of the Act, the court may vary, modify or rescind such order in any manner as the court deems fit.

9. We notice that in the application under Section 25(2) of the Act, the only ground taken by the appellant is that the appellant has come to know about the Part-II Order and the issue of Family Details wherein the elder daughter has been shown as a family member of the late first husband of the respondent.

10. It is not in dispute that the appellant was aware of the first daughter of the respondent from the first marriage at the time when he solemnized the marriage with the respondent. When a person solemnizes a marriage with a person who already has a child, said person shall be presumed to have undertaken the responsibility of the child and also cannot later be permitted to contend that the child is not his/her responsibility.

11. If the Respondent had known that the appellant was not going to maintain her first daughter, she would not even have married him. It is

not in dispute that appellant was bringing up the elder daughter and maintaining her till the parties fell out.

12. It is also not in dispute that after the passing of the judgment on 13.07.2017, appellant complied with it and paid for her maintenance till the filing of the subject application on 24.08.2022. The order passed by the Army Authorities showing the elder daughter of the respondent from her marriage as a family member of her late husband would not have any bearing on the order of maintenance passed by the Family Court for the reason that the appellant was aware of the existence of the daughter and had also undertaken the responsibility of the daughter.

13. The order passed by the Army Authority merely recognizes a fact which already existed and was within the knowledge of the appellant and as such the same would not constitute a change in circumstance as required under Section 25(2) of the Act.

14. Accordingly, we find no infirmity in the view taken by the Family Court that there is no change in the circumstances entitling the appellant for modification of the order. The appeal is, consequently, dismissed.

SANJEEV SACHDEVA, J

VIKAS MAHAJAN, J

MARCH 01, 2023/MK