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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : October 20, 2016

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MAT.APP.(F.C.) 79/2014

MANPREET SINGH BHATIA

..... Appellant

Represented by: Ms.Rebecca M.John, Senior
Advocate instructed by
Ms.Koplin K.Kandhari,
Advocate.

versus

SUMITA BHATIA

..... Respondent

Represented by: Mr.Rajat Aneja and
Ms.Chandrika Gupta,
Advocates.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. The husband is aggrieved by the order dated June 02, 2014 deciding application filed under Section 24 of the Hindu Marriage Act, 1955 by the wife granting monthly maintenance in sum of ₹25,000/- to the wife and similar amount towards education and maintenance Baby Sohana born to the couple on December 03, 2003.

2. Learned Senior Counsel for the appellant did not challenge the impugned order insofar ₹25,000/- per month has been directed to be paid to the respondent for the education and maintenance of Baby Sohana who is currently a hostler in a renowned school in Lonavala. Challenge was to ₹25,000/- per month directed to be paid to the wife for her maintenance, but

added that he may be able to meet his daughter, whom he has not met for last three years.

3. The object behind Section 24 of the Hindu Marriage Act, 1955 is to provide for maintenance, pendente-lite, to a spouse in matrimonial proceedings so that during the pendency of the proceedings the spouse can maintain herself/himself and also have sufficient funds to carry on the litigation so that the spouse does not unduly suffer in the conduct of the case for want of funds.

4. A spouse unable to maintain himself/herself is entitled to maintenance on the principle of equi-status and respect that the spouse would have enjoyed if he/she continued to live with other spouse.

5. The provisions of Section 24 are beneficent in nature and the power is exercised by the Court not only out of compassion but also by way of judicial duty so that the indigent spouse may not suffer at the instance of the affluent spouse. The legislature, in its discretion, has not fixed any guideline regarding ceiling limit of maintenance, pendente-lite, as in the case of Divorce Act or Parsi Marriage Act. The word '*support*' in Section 24 is not to be narrowly interpreted. It does not mean bare existence. It means that the claimant spouse should have the same comfort as the other. Of course, the Section is not intended to bring about arithmetical equality between the two.

6. The Court while considering the merits of an application for grant of an interim maintenance under Section 24 has to necessarily arrive at prima-facie determination about the earning capacity of the rival claimants. The determination cannot be made with exactitude; it is essentially interim in nature. The Court is called upon to make a summary consideration of amount which the applicant is to be awarded by way of maintenance pendente-lite and litigation expenses in accordance with the financial

resources of the parties. Capacity of the other party to earn cannot be taken into consideration – it is only the actual earning of the opposite party on the basis of which relief can be granted. Permanent income and not casual income is relevant. For example if a husband brings on record that the non-applicant wife earns some amount by taking coaching classes for children, this cannot be termed as her permanent income or that the wife has independent permanent source of income. The proceedings being summary, the matter has to be decided on the basis of pleadings supported by affidavits and the documents that may be filed by the parties in support of their case.

7. Where there was sufficient means in the family of the husband on the strength of which the husband got married he has to share the burden to support his wife during the course of annulment of such marriage.

8. Where the parties do not come forward with exact income they have, the Court would have no alternative but to apply its guess-work. In the decision reported as 140 (2007) DLT 16 Sh.Bharat Hegde Vs. Smt.Saroj Hegde it was held that under noted eleven factors have to be taken into account: -

- (i) Status of the parties.
- (ii) Reasonable wants of the claimant.
- (iii) The independent income and property of the claimant.
- (iv) The number of persons, the non applicant has to maintain.
- (v) The amount should aid the applicant to live in a similar life style as he/she enjoyed in the matrimonial home.
- (vi) Non-applicant's liabilities, if any.

(vii) Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.

(viii) Payment capacity of the non applicant.

(ix) Some guess work is not ruled out while estimating the income of the non applicant when all the sources or correct sources are not disclosed.

(x) The non applicant to defray the cost of litigation.

(xi) The amount awarded u/s 125 Cr.PC is adjustable against the amount awarded u/ 24 of the Act.

10. As per the appellant he earns only ₹10,000/- per month and claims that his parents support him. He claims that his wife belongs to a very rich family which owns a bungalow in Lokhandwala in Mumbai, a flat in Bandra in Mumbai, a bungalow in Swarup Nagar, Kanpur. Revenue income is generated from a petrol pump and two warehouses in Lucknow and Mumbai.

11. The wife admits ownership of a flat in Bandra, Mumbai in the name of her mother and claims she has no share therein. She denies any other property being owned by either her mother or herself. Her father is dead. There are no other siblings.

12. The husband gives no particulars of the bungalow in Lokhandwala or in Swarup Nagar, Kanpur nor of the petrol pump and two warehouses in Lucknow and Mumbai and thus we hold that as regards the wife the only proof is that her mother owns a flat in Bandra where she stays with the wife.

13. As regards the husband he admits to be partner in M/s Allied Safe Company and claims his monthly income to be ₹10,000/- per month and with reference to the account books of the partnership firm claims that total turnover was about ₹48,00,000/- per annum.

14. The couple are not well-educated. The wife is 10th pass. The educational qualifications of the husband are not on record.

15. The family of the appellant is well off. He resides with his parents in a house in Rajouri Garden which is built on a plot of land ad-measuring 1000 sq.yards. The family has four luxury cars, a Mercedes Benz, Honda City, Toyota Altis and Mahindra SUV 500.

16. It is thus a classic case where one can safely say that the husband is not telling the truth regarding income generated from the business by the partnership firm, which is a family firm and he is a partner therein.

17. Concededly when all was fine between the couple the daughter was studying in a premier school in Delhi : G.D.Goenka Public School and we take judicial notice of the fact that monthly fee, transportation and other charges paid were around ₹7500/- per month and this would not be possible if the appellant was earning ₹10,000/- per month.

18. On June 06, 2012, after the disputes had surfaced the parties entered into a memorandum of settlement as per which the appellant agreed to pay ₹30,000/- per month to his wife for her maintenance and ₹30,000/- per month for the maintenance of the daughter. Of course, the memorandum of settlement required the wife to obtain divorce by mutual consent and receive ₹30,000/- per month even thereafter till she got remarried, if at all.

19. This memorandum was complied with by the husband for about six months and it shows his means.

20. The husband stopped complying with the memorandum because the wife opened up multifarious litigation fronts and the husband rightly believed that using his money, his wife was troubling him.

21. Of the various proceedings launched by the wife we find one having been instituted under the Protection of Women from Domestic Violence Act,

2005 at Lucknow, a place where there would be no territorial jurisdiction as conceded to by learned counsel for the wife because neither was the couple married in Lucknow nor ever lived there either in their own house or in the house of the relative. Learned counsel for the wife fairly conceded that the respondent was ill-advised to proceed to Lucknow where neither parent of her lives; in fact her father is no longer in the world of the living. She has no roots there except some distant relatives. Though the wife denies, it is apparent that she chose the venue at Lucknow because she has a place to stay there with her relatives and when the husband travels to Lucknow he has to stay in a hotel. We take on record statement made by the counsel for the respondent that she would withdraw the proceedings instituted at Lucknow and if necessary institute proceedings under the Protection of Women from Domestic Violence Act, 2005 in the court having territorial jurisdiction.

22. Be that as it may, keeping in view the legal principles governing a decision under Section 24 of the Hindu Marriage Act, 1955 we are satisfied that the appellant is hiding his true income and keeping in view the luxurious life style in which he lives, evinced by the four luxury cars maintained by his family, we are of the opinion that the impugned order needs no interference with.

23. As noted in paragraph 2 above the appellant while expressing his willingness to pay maintenance to his daughter was aggrieved to the extent that for the last about three years, he has not been able to even see his daughter.

24. Though this is not a petition concerning the visitation rights of the parties, a father who is ready and willing to pay maintenance for his daughter is also entitled to see his daughter at least on festivals, her birthday or at regular interval.

25. The appellant is resident of Delhi whereas the respondent is residing in Mumbai and the daughter is studying in Lonavala and staying in hostel.

26. We, therefore, permit the appellant to visit his daughter at Lonavala and meet her in her school. Necessary instructions in this regard shall be given by the respondent to the Principal of the school to enable the appellant to meet his daughter on her birthday, festivals or once in three months. The respondent shall provide the appellant necessary details about the contact number of the Principal as well as intimate him about the instructions given by her to the school authorities to enable them to permit the appellant to meet his daughter.

27. The appeal is disposed of without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

OCTOBER 20, 2016

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