

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

+ CM(M) 598/2008 & CM Nos. 7157/2008, 10669/2008,
295/2009, 921-922/2009

% Date of Decision : 13th April, 2009

ASHISH GUPTA Petitioner
Through Mr. Rajat Aneja, Advocate
versus

NALINI GUPTA Respondent
Through Mr. Y.P. Bhasin, Advocate
with respondent in person.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

J U D G M E N T

MANMOHAN, J (oral)

1. Present petition has been filed under Article 227 of Constitution of India challenging order dated 27th March, 2008 passed by learned ADJ whereby respondent's application under Section 24 of Hindu Marriage Act, 1955 (hereinafter referred to as "HM Act") was disposed of by directing petitioner/husband to pay a sum of Rs. 40,000/- per month as maintenance to respondent/wife and Rs. 25,000/- towards litigation expenses. The relevant reasoning in the impugned order dated 27th March, 2008 is reproduced hereinbelow for ready reference :-

"12. The father of the petitioner is agriculturist and businessman whereas father of the respondent/wife is a respected lawyer in the Hon'ble High Court. Both the parties come from well off families of the society. Considering the social and economic background of the parties, their respective qualifications and other facts and circumstances, I conclude that petitioner is having high financial status and he is in a very good position to provide decent standard of living to his wife and daughter. The applicant/wife and daughter are entitled to same standard of living as enjoyed by the petitioner. It is already observed that petitioner has not come out with

full disclosure of his income and the income tax returns so filed by him finds no justification for reliance in the facts and circumstances of the case. In this situation it is for the court to apply conjuncture and guess work to reach upon just and reasonable conclusion about the income of the petitioner and consequent monthly grant to the applicant. It is clear that petitioner has got various properties to his credit and they are invariably profitable and generating finances for the petitioner. The petitioner is under legal and moral duty to provide maintenance to wife and child. There is nothing on record to suggest that respondent/wife is gainfully employed or having any independent source of income.

13. Considering the nature of facts and circumstances and the other material on record, it can safely be concluded that petitioner must be having income of more than Rs. 1 Lakh per month. Considering the reasonable requirements of the applicant/wife and the daughter and the status to which they are entitled to live in, I am of the opinion that an amount of Rs. 40,000/- per month would be sufficient for the maintenance of the respondent/wife and the daughter. I, therefore, order that petitioner/husband would pay an amount of Rs 40,000/- per month for the maintenance of the respondent/wife and the daughter Kashish with effect from the date of the application till disposal of the present petition. Besides this, the petitioner/ husband is also directed to pay an amount of Rs. 25,000/- towards litigation expenses to the respondent. The application is accordingly disposed of."

2. Mr. Rajat Aneja, learned Counsel for petitioner submits that impugned order dated 27th March, 2008 has been passed without taking into consideration petitioner's affidavit as well as income tax return filed by him since 2002 onwards. Mr. Aneja further contends that properties which are mentioned in application under Section 24 of HM Act are not owned by petitioner/husband but are ancestral properties of petitioner's family and he has a minimum share in the same. He further states that total assets of petitioner are worth less than Rs. 22 lacs, out of which a major part is his house situated at 1, Savitri Nagar in which he lives and he only owns a 1997 model Maruti Esteem. He lastly states that petitioner is an advocate, practicing in Patiala House Courts, New Delhi but has a very limited practice as he primarily attends to litigation initiated by respondent/wife.

3. Mr. Y.P. Bhasin, learned Counsel for respondent/wife on the other hand alleges that petitioner and his family members have properties and assets to the tune of more than Rs. 100 crores. The details of petitioner's assets, according to respondent, are as under :-

"(i) that the petitioner and his family owns agricultural land measuring about 100 acres known as nahri land and tubewells situate in Village Wazirpur, District Ferozepore, Punjab and the land is fertile and cotton, rice, wheat, mustard etc. are grown. The income from this land is about 18-20 lac per annum. The share of the petitioner is 1/3rd which comes to Rs. 6-7 lac per annum.

(ii) the petitioner and his family also owns agricultural land measuring more than 60 acres in District Ganganagar, Rajasthan and petitioner's share from this land is about Rs. 3-4 lac per annum.

(iii) the petitioner and his family owns two big buildings in Ferozepur city near Bansi Gate known as Ashok Bhawan, Ashok Market. This building consists of 20 shops/offices and 10 flats. This building is mostly on rent and the total income from this property is about Rs. 12-15 lac per annum and the share of the petitioner comes to Rs. 4-5 lac per annum.

(iv) the petitioner and his family own a house at Ferozepur Cantt. (Punjab) and this house is known as Cement House on the Church Road built on approx. 4-5 acres of land. This building is having 8 to 10 flats and mostly these flats have been given on rent. The income from this building is about Rs. 2-2.50 lacs per annum and the share of petitioner comes to Rs. 75,000/- per annum.

(v) the petitioner and his family own a big bungalow known Fairy Hall in Mussorie, Uttranchal, Dehra Dun. This bungalow is built on 4 acres of land on the Library Road. The building is having 7 bed rooms besides drawing room and some portion of this building is given on rent and share of the petitioner from this building comes to about Rs. One lac per annum.

(vi) the petitioner and his family own house No. D-126, Panchsheel Enclave, New Delhi. This house is built on an area of 300-400 sq. yards and is multi-storeyed and three floors of the same is given on rent and the income from this building is about Rs. 18 lac per annum and 1/3rd share of the petitioner is about Rs. 6 lac per annum.

(vii) the petitioner and his family own a commercial building known as MTNL building bearing No. 1 Savitri Nagar, New Delhi – 110 017. It is a six-storeyed building and is having many flats and offices. One apartment consisting of 3 bed rooms is self-occupied and remaining building is rented and income from this building is about Rs. 80 – 84 lac per annum and the share of the petitioner

is one-fourth which comes to Rs. 20 lac per annum. It is relevant to mention that besides the petitioner and his brother, Smt. Preeti Gupta, petitioner's mother has also a share in this building.

(viii) the petitioner independently own a commercial office space in Connaught Place Statesman Building which he purchased in the year 2005 and the rental income from this building is Rs. 2 lac per annum.

(ix) the petitioner and his family own a commercial space more than 2000 sft. in Antriksh Bhawan, Barakhamba Road and income from this building is not known.

(x) the petitioner and his family own in HIG Multi-storeyed flats on the Ghaziabad border near Anand Vihar Inter-State Bus Terminus and rental income of the petitioner from this building is not known.

(xi) the petitioner and his family is having two apartments in Vaishali, Ghaziabad and rental income from these apartments is not known to the petitioner.

(xii) besides the aforesaid immoveable properties, the petitioner is having assets in the shape of stocks and shares in various companies and the market value of the shares is more than Rs. 40 lakhs and the petitioner is having income of about Rs. 6 lac per annum from these shares and he also deals in shares.

(xiii) The petitioner is a monthly lender and has given loans to various persons to the tune of about Rs. 40 to 50 lac. He has appointed 2-3 persons known as Karindas to collect payments. The petitioner is having an income of more than Rs. 6-7 lac per annum.

(xiv) the petitioner owns a share in the rice mill in Ferozepore (Punjab). Income from this source is not known to the petitioner.

(xv) the petitioner is having a distributorship of Surgical Consumables of Steripac Company and income from this source is about Rs. 8-10 lac per annum.

(xvi) the petitioner is an Advocate and is having flourishing practise and his office situate at House No. 1-Savitri Nagar Ground Floor with all modern gadgets. He is having two juniors and the petitioner is having an income of Rs. 8-10 lac per annum.

(xvii) the petitioner and his family is having a lavish life style of living with having all the modern luxuries. The family owns more than 6 cars including Mercedes, Toyota Corolla and Ceilo, Esteem, Indica, Zen etc.

(xviii) the petitioner is also a member of many clubs including Ferozepore Army Club, Ferozepore Cantt. (Punja), Holiday Club Panchsheel Enclave, New Delhi.

(xix) the petitioner and his family are having 10-12 servants for house-hold jobs at Delhi, Ferozepore,

Mussorrie and have employed about 30 labourers in their agricultural land at Ferozepore, Ganganagar, etc.

(xx) that the income of the petitioner, on the lower side, is about Rs. 6-7 lac per month i.e. about Rs. 70-80 lacs per annum."

4. Mr. Bhasin has also taken me through trial court record with regard to house tax return for basement at Statesman House, sale deeds of 1, Savitri Nagar as well as petitioner mother's letter written at the time of marriage negotiations. He further states that petitioner/husband had even filed two cases under Section 138 of Negotiable Instruments Act against two different persons wherein petitioner is seeking recovery of Rs. 85,000/- and Rs. 75,000/- respectively.

5. Before I advert to facts of the present case, I may mention that the law with regard to maintenance is fairly well-settled. In ***Bharat Hedge vs. Saroj Hegde*** reported in ***140 (2007) DLT 16***, this Court has culled out 11 factors which are to be taken into consideration while deciding an application under Section 24 of HM Act. The said factors are reproduced hereinbelow for ready reference :-

"8. Unfortunately, in India, parties do not truthfully reveal their income. For self employed persons or persons employed in the unorganized sector, truthful income never surfaces. Tax avoidance is the norm. Tax compliance is the exception in this country. Therefore, in determining interim maintenance, there cannot be mathematical exactitude. The court has to take a general view. From the various judicial precedents, the under noted 11 factors can be culled out, which are to be taken into consideration while deciding an application under Section 24 of the Hindu Marriage Act. The same are:

"1. Status of the parties.

2. Reasonable wants of the claimant.

3. The independent income and property of the claimant.

4. The number of persons, the non applicant has to maintain.

5. *The amount should aid the applicant to live in a similar life style as he/she enjoyed in the matrimonial home.*

6. *Non-applicant's liabilities, if any.*

7. *Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.*

8. *Payment capacity of the non applicant.*

9. *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.*

10. *The non applicant to defray the cost of litigation.*

11. *The amount awarded u/s. 125 Cr.PC is adjustable against the amount awarded u/s. 24 of the Act."*

6. Recently, a Division Bench of this Court in the case of ***Radhika Narang & Ors. vs. Karun Raj Narang & Anr., FAO(OS) 139/2006*** has, after considering the law with regard to maintenance, held as under :-

"26. Thus, after considering the above position of law, it is evident that the following principles emerge from the above judgments:

a. Maintenance depends upon the summation of all the facts of the situation as laid down in Dr. Kulbhushan Kunwar v. Raj Kumari.

b. For granting maintenance, the scale and mode of living, the age, habits, wants and class of the life of the parties has to be regarded as laid down in Dr. Kulbhushan Kunwar v. Raj Kumari (supra).

c. Maintenance being such that the wife could live in a reasonable comfort; considering her status and mode of life which she was used to while living with her husband as laid down in Jasbir Kaur Sehgal v. District Judge, Dehradun and Ors.

d. During the pendency of the suit for maintenance, which may take a considerable time to attain finality, the wife cannot be forced to face starvation till she is subsequently granted maintenance from the date of the filing of the suit as laid down in Neelam Malhotra v. Rajinder Malhotra and Ors.

e. Maintenance must necessarily encompass a provision for residence. Maintenance is given so that the lady can live in the manner, more or less, to which she was

accustomed, as laid down in Komalam Amma v. Kumara Pillai Raghavan Pillai and Ors. SLP (C) No. 3670/2005 decided on 14th November, 2008.

f. Maintenance, necessarily must encompass a provision for residence. Maintenance is given so that the lady can live in the manner, more or less, to which she was accustomed. The concept of maintenance must, therefore, include provision for food and clothing and the like and take into account the basic need of a roof over the head. [as laid down in Mangat Mal v. Punni Devi.

g. Maintenance must vary according to the position and status of a person. It does not only mean food and raiment. as laid down in Maharani Kesarkunverba v. I.T. Commissioner.

27. The purpose of providing maintenance, in our view, is thus meant to secure to a wife/spouse claiming maintenance, as far as possible, the status and facilities enjoyed by her prior to her separation from her husband when her maintenance claim is finally determined. The determination of maintenance not being governed by any rigid or inflexible rule gives wide power and discretion to the Court to do justice."

7. In the present case, admitted position is that petitioner/ husband besides being an Advocate practicing in Patiala House Court is owner of a basement at Statesman House building as well as owns 28% share (16% as per first sale deed and 12% as per second sale deed through HUF) of 1, Savitri Nagar which is a 470 sq. yds. plot. Admittedly, petitioner along with his family members also owns huge tracts of agricultural land at Ferozepore, Punjab and District Ganganagar, Rajasthan as well as a house known as Cement House at Church Road, Ferozepore Cantt, Punjab and a commercial building at Ashok Bhawan, Ashok Market, Ferozepore Citi, Punjab. It may be true that petitioner, till date, has not sought partition of ancestral properties owned by him along with his family members but the fact remains that he has a share in the same even though it may be an indeterminate one at this stage. The fact that petitioner and respondent had for sometime shifted their matrimonial home to Ferozepore, proves that petitioner must have been looking after

and collecting income from agriculture and commercial properties owned by the family at Ferozepore.

8. Consequently, for me at this stage it is not possible to reach a conclusion that the trial court's finding that petitioner has a monthly income of Rs. 1 lac is either perverse or in excess of jurisdiction or suffers from any material irregularity. However, I am of the view that respondent/wife along with her minor daughter is only entitled to 1/3rd share in monthly income of petitioner/ husband as expenses on maintaining properties and paying taxes have also to be taken into account. Accordingly, I vary/modify the trial court's order dated 23rd March, 2008 only to the extent that respondent/wife is entitled to monthly maintenance of Rs. 33,000/- from the date of filing of application till disposal of main petition. Petitioner/husband is directed to pay the outstanding arrears of maintenance along with litigation expenses of Rs. 25,000/- within a period of three months from today, if not already paid.

9. In view of aforesaid, learned Counsel for respondent/wife states that he does not wish to press his counter petition, which is accordingly dismissed as not pressed.

10. With the aforesaid observations, present petition and pending applications stand disposed of. Order dasti.

MANMOHAN,J

APRIL 13, 2009
rn