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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CM(M) 110/2010 & CM.No.10845/2010 (STAY)

% ***Judgment Delivered on: 25.10.2010***

SANJEEV GUPTA

..... Petitioner
Through: Mr.Sikander Arora, Adv. for petitioner
along with the petitioner in person

versus

MONICA GUPTA

..... Respondent
Through: Ms.Garima Prasad and Ms.Neha Goyal,
along with the respondent in person

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

G.S.SISTANI, J. (ORAL)

1. Present petition is directed against the order dated 26.05.2009 passed in an application filed by the respondent wife under section 24 of the Hindu Marriage Act, by virtue of which trial court has awarded maintenance to the wife and a minor son @ ₹5,000/- per month. Aggrieved by the aforesaid order petitioner herein filed a review petition which was also dismissed on 19.08.2009.
2. Aggrieved by the aforesaid two orders, petitioner has filed the present petition. According to counsel for the petitioner, petitioner is unemployed and he has no source of livelihood and further he is suffering from slip disk prolapsed, for which one surgery was performed in the year 2004. Counsel for the

petitioner submits that even as of today, petitioner is unemployed for medical reasons and the doctor has advised him for another MRI and in all probability he will have to undergo for another surgery. It is also submitted that respondent is gainfully employed and thus in these circumstances no maintenance can be awarded to her, and in fact is a fit case where the wife should be called upon to pay maintenance to the husband. Counsel for the petitioner also submits that at the time when the petitioner was gainfully employed he had purchased a plot at Pune on instalments. It is contended that on account of his inability to pay the instalments the petitioner has entered into an arrangement with his sister for paying the balance instalments of approximately ₹50,000/- per month for the plot. Petitioner does not dispute that he is paying a premium for health insurance @ approximately ₹13,000/- annually for part insurance of himself and insurance of wife and minor child. Petitioner also submits that he has no source of any livelihood and his parents have also disowned him, he is residing with his brother and sister and he is being looked after by them. They are also providing him with food, clothing and shelter as also the medical expenses are being borne by them. He does not dispute that at the time of retrenchment on 05.05.2009 he was paid a sum of ₹5,00,000/-, however, out of this amount, some instalments were paid for the plot at Pune. Counsel for the petitioner also submits that the wife and child do not need any maintenance as the wife is gainfully employed.

3. Counsel for the respondent has opposed this petition *primarily* on two grounds : firstly that petitioner had himself resigned from where he was working and was drawing salary of ₹1,30,000/- per month. In support of her plea, counsel for the respondent has relied upon the resignation letter dated 12.02.2009 filed at page 230 of the paper book. She further submits that in reply to the application under Section 24 of the Hindu Marriage Act filed by the respondent herein (wife), petitioner had admitted his salary and within 10 days thereafter he submitted not only his resignation, but simultaneously also moved an application under section 24 of the Hindu Marriage Act that he should be provided maintenance from wife.
4. Counsel for the respondent submits that respondent has placed all her salary slips on record to show that she is earning a sum of ₹7,801/- out of which a sum of ₹689/- is being deducted by her employer. She submits that respondent has to maintain herself, her school going child aged about 5 ½ years, who is at present studying in Laxman Public School. She has to pay for his uniform, transport and extra-curricular activities besides other day-to-day expenses. She also submits that the amount of salary is extremely insufficient for maintaining herself and her minor son.
5. Counsel for respondent submits that petitioner is fully capable of working which is evident from the fact that assuming that he suffered a slip disk for which a surgery was performed upon him in the year 2004, admittedly, even after the surgery he continued to work till the year 2009, when he resigned, thus, it is clear that the

slip disk did not come in his way of carrying out his day-to-day work and in fact during that period he was earning a hefty salary of ₹1,30,000/- per month. She submits that medical prescriptions placed on record and the repeated submissions of his second surgery are imaginary and cannot be relied upon, as the subsequent MRI shows little or no change from the previous MRI performed on the petitioner.

6. I have heard counsel for the parties and given my thoughtful consideration to the matter. In this case, marriage between the parties was solemnised on 22.2.2004. Out of the wedlock, one son was born who is at present 5 ½ years of age and is studying in Laxman Public School. In the application filed under Section 24 of the Hindu Marriage Act the wife has fairly disclosed that she is working with Citigroup Global Services, Gurgaon, and is drawing a salary of ₹7500/-, per month, and ₹689/- is being deducted. The respondent wife has also placed on the record of the trial court her salary slips in support of the salary drawn. The petitioner herein did not place any material document with regard to his terms of employment, nor documents to show the amounts received by him on retrenchment. Copy of the Income Tax Return filed for the assessment years 2008-2009 shows gross total income to be ₹12,82,873/-. The submission of the counsel for the petitioner is that at present petitioner is unemployed and he is not capable of earning due to his health reasons, and on the contrary the wife is employed and is earning enough to support herself and the minor child.

7. Learned trial court while considering the application has taken into consideration the salary of the respondent (wife) and also given a finding that her salary is insufficient for maintaining herself and her school going child. While counsel for the petitioner has submitted before the court that respondent is earning much more, however, no document has been placed on record to substantiate this plea. In the light of the salary slips filed by the respondent, in my view there is no infirmity in the finding of the trial court on this account. Having regard to the fact that the wife is only earning ₹7500/-, per month, it would not be possible for her to maintain herself and her school going child, much less she can be called upon to pay maintenance to her husband.
8. As far as the medical disability of the petitioner is concerned, the medical prescriptions filed on record certainly show that petitioner is suffering from a back problem, but having regard to the fact that even after the surgery performed on the petitioner in the year 2004, petitioner continued to work and was drawing a hefty salary and, thus, it cannot be said that on account of his back problem, he was not in a position to carry out his job. Counsel for the petitioner has also not placed on record any material on record or documents/certificate to show that the petitioner has been advised bed rest, thus, it cannot be said that on account of his medical problem the petitioner is not capable of working.
9. It may be noticed that the petitioner has entered into an arrangement with his own sister by which she has agreed to pay

instalments on behalf of the petitioner with regard to the plot purchased by him at Pune. On a query raised by this court, this court has been informed that the sister of the petitioner is working with a bank. I am not satisfied that the arrangement entered into between the petitioner and his sister is genuine. It is doubtful whether the sister would have sufficient earning to pay ₹50,000/-, per month as instalment for the plot at Pune. The conduct of the petitioner is also not above board. The petitioner did not place the material document to show the amounts received by him from his employer, on being retrenched. Only subsequently the petitioner has admitted that he has received ₹5,00,000/-. I find no force in the submission of counsel for the petitioner that a sum of ₹5,00,000/- received by him have been spent either on medical bills or instalments for the plot. The petitioner showed little or no concern even for his minor son, whereas the petitioner is duty bound to maintain his wife and son. The petitioner should have at the very first instance made the arrangements for maintenance of his wife and son, which is surely more important than paying instalments for the plot. While deciding the application the trial court has taken into consideration the settled law on the subject.

10. The law with regard to fixing maintenance under Section 24 of the Hindu Marriage Act is well settled. In the case of ***Jasbir Kaur Sehgal vs. District Judge, Dehradun and Ors.***, reported at (1997) 7 SCC 7, it has been observed that neither of the parties disclose the correct and true income therefore the Courts have to

do some guess work to arrive at a fair and just figure. Para 8 of the judgment reads as under:

“8. The wife has no fixed abode of residence. She says she is living in a Gurudwara with her eldest daughter for safety. On the other hand the husband has sufficient income and a house to himself. The Wife has not claimed any litigation expenses in this appeal. She is aggrieved only because of the paltry amount of maintenance fixed by the courts. No set formula can be laid for fixing the amount of maintenance. It has, in the very nature of things, to depend on the facts and circumstance of each case. Some scope for liverage can, however, be always there. Court has to consider the status of the parties, their respective needs, capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate. In the circumstances of the present case we fix maintenance pendente lite at the rate of Rs.5,000/- per month payable by respondent-husband to the appellant-wife.”

11. The petitioner even assuming is not working at the moment, seems to be have created this situation, voluntarily and thus it cannot be said that he is not in a position to earn at all.

12. Counsel for the petitioner has relied upon **Alok Kumar Jain Vs. Purnima Jain** reported at 140 (2007) DLT 476 and more particularly paragraph 10, which reads as under:

“10. Law under Section 24 of the Hindu Marriage Act is well crystallized. From the judicial precedents, factors which can be culled out as required to be kept in mind while awarding interim maintenance are as under:

- (i) Status of the parties;
- (ii) Reasonable wants of the claimant;
- (iii) The income and property of the claimant;
- (iv) Number of persons to be maintained by the husband;
- (v) Liabilities, if any, of the husband;

- (vi) The amount required by the wife to live a similar life-style as she enjoyed in the matrimonial home keeping in view food, clothing, shelter, educational and medical needs of the wife and the children, if any, residing with the wife, and
- (vii) Payment capacity of the husband.”

13. I have perused the judgment relied upon by counsel for the petitioner. While there is no dispute with regard to the proposition of law laid down, but I am afraid that the same is of no help to the petitioner and the same is not applicable to the facts of this case.

14. In view of above, I find no grounds to interfere in the orders dated 26.05.2009 and 19.08.2009. Accordingly, the petition and the application are dismissed. All interim orders stand vacated.

October 25, 2010
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G.S. SISTANI, J.