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

+ CM(M) 222/2010

% Date of Judgment 10 November, 2010

ANITA Petitioner
Through : Mr. Amit Kumar, Adv.

versus

BIJENDER SINGH Respondent
Through : Mr. Robin Majumdar and Mr. Manish
Pathak, Advs.

**CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI**

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

G.S.SISTANI, J (ORAL)

1. Present petition is directed against the order dated 17.12.2008 passed by Additional District Judge, Delhi, on an application filed by the petitioner (wife) under Section 24 of the Hindu Marriage Act, in HMA No.405/08/06, seeking interim maintenance.
2. Marriage between petitioner and respondent was solemnized on 23.1.2000. Out of their wedlock one daughter was born. Parties are residing separately since the year 2003. The petitioner filed an application under Section 24 of the Hindu Marriage Act seeking interim maintenance which was dismissed by the trial court only on the ground that petitioner had misrepresented and mislead the Court and did not approach the Court with clean hands.
3. Learned counsel for the petitioner submits that petitioner was residing in a rented accommodation whereas the address mentioned in the memo of parties is of her parents. Trial court did

not find the explanation, rendered by the petitioner, to be satisfactory as the summons were served on the petitioner at the address mentioned in the memo of parties.

4. Learned counsel for the petitioner submits that petitioner has no source of livelihood except ₹1000/-, which is being received by her pursuant to the order passed by learned Metropolitan Magistrate in the proceedings filed by her under Section 125 Cr.P.C. Counsel further submits that besides herself the petitioner has to maintain her minor daughter, who is stated to be nine years of age, for which she is relying upon her family for financial help as well as emotional support.
5. Learned counsel for the respondent submits that trial court has rightly dismissed the application filed under Section 24 of Hindu Marriage Act as the petitioner has given a different address in the memo of parties and a different address has been given in Annexure A-2, which has been filed along with the petition.
6. I have heard learned counsel for the parties and given my thoughtful consideration to the matter. A perusal of Section 24 of the Hindu Marriage Act makes it abundantly clear that the main aim, object and intent is to enable either spouse, who has no independent source of income for his or her support and necessary expenses for proceeding under the Act to claim maintenance and expenses during the pendency of the proceedings in order to avoid any hardship on the person.
7. Courts have all along been extremely sensitive in dealing with cases where parties have approached courts with unclean hands and have suppressed and withheld material facts from the court. No doubt the petitioner has given two addresses, one in the

memo of parties and the other in Annexure A-2, which were brought to the notice of the trial court. Learned counsel for the petitioner on a query raised by the trial court had explained that the address mentioned in the memo of parties is the address of the parents of the petitioner and the address mentioned in Annexure A-2 is the address of House No.592/26, West Ram Nagar, Sonipat, Haryana, which has been taken by her on rent.

8. It is not unusual for a young mother, who has to bring up a minor child to fall back and rely upon her parents for financial help, support and security. It is understandable that summons issued to the petitioner at the address of her parents were received by her. It is also not unusual that petitioner would have taken accommodation on rent for the sake of her own independence or for any other reason including paucity of accommodation in her parental house or to allow other family members to live in comfort.
9. While dealing with suppression of facts the court must satisfy itself that the fact, which is suppressed is material for deciding the issue between the parties. Suppression of any fact by itself cannot deny equitable relief much less a relief, sought by the petitioner, in this case on an application under Section 24 of the Hindu Marriage Act, which provides relief to a spouse, who has no independent source of income to maintain himself or herself. The mere fact that two addresses were pointed out by the respondent to the trial court would by itself not show that petitioner, who seeks interim maintenance, has an independent source of income to maintain herself and her minor daughter. It is well open to any court to consider the effect of any suppression and in case the

court is satisfied that there is any willful suppression or the suppression of facts have been made in order to steal an order from the court, it is always open for the court to decide to what extent such relief should be denied to such a person.

10. In the case of ***Arunima Baruah v. Union of India***, reported at (2007) 6 SCC 120, the Apex Court has defined “material” fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. The Court has also held that “if the facts suppressed are not material for determining the lis between the parties, the court may not refuse to express its discretionary jurisdiction”.
11. Merely, because two addresses were mentioned, does it mean that petitioner would become remediless and would not be entitled for interim maintenance for herself and her minor daughter. The answer is in negative. The learned trial court has failed to state in its order the effect of two addresses of the petitioner. The trial court has followed an extremely insensitive approach and has lost sight of the fact that petitioner has claimed that she has no independent source of livelihood and has to bring up her minor daughter. No doubt he, who seeks equity, must do equity and the courts may ordinarily refuse to grant relief to a person whose conduct in regard to the subject matter of the litigation has been improper.
12. The order passed by learned trial court dated 17.12.2008 no doubt states that two addresses have been given by the petitioner but nowhere in the order has the Court discussed as to what is the

effect and implication of the petitioner having given two addresses in the petition.

13. Accordingly, the order dated 17.12.2008 passed by learned trial court is set aside. Matter is remanded back to the concerned Court for fresh hearing in the matter. Trial court will hear the application for interim maintenance at the first instance. Parties shall appear before the concerned Court on 1.12.2010, the date already fixed in the matter. It is made clear that any observation made by this court while deciding this petition is not an impression on the merits of the matter and the trial court shall decide the matter in accordance with law.
14. With these directions petition is allowed in above terms.

November 10, 2010
'msr'

G.S. SISTANI, J.