

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

+ CM(M) 219/2009 & CM No.3738/2009

Date of Decision: 3rd February, 2010

IKJOT CHATWAL Petitioner
Through: Ms. Arpita Rai, Advocate.
versus

BALBIR CHATWAL Respondent
Through: Mr.S.K.Gupta, Advocate
with Respondent in person.

%

CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not?
- (3) Whether the judgment should be reported in the Digest ?

J U D G M E N T

ARUNA SURESH, J. (Oral)

1. Petitioner has filed a petition under Section 13 (1) (i-a) of the Hindu Marriage Act (hereinafter referred to as the 'Act') seeking divorce on the ground of cruelty against the respondent. She also filed an application under Section 24 of the Act on 15th July, 2006, during pendency of the divorce petition. She claimed maintenance at the rate of Rs.3,00,000/- per month for herself and Rs.50,000/- per month for each child i.e. applicants No. 2 and 3 in

the petition and another sum of Rs.20,000/- as coaching fee of applicant No.2. She also sought directions to be issued to the respondent to transfer the flat in her name and to keep aside a sum of Rs.2,00,000/- annually for higher educational expenses of the minor children. She further claimed Rs.1,00,000/- towards litigation expenses.

2. Trial Court vide its impugned order dated 3rd December 2008, allowed the application of applicant Nos. 2 and 3 i.e. the children and passed the following order:-

“22. The applicant nos. 2 & 3 are entitled to maintenance for the period post filing of the application i.e. 15.07.2006. Keeping in mind the background and status of the parties and their earning so also the expenses already incurred by the non-applicant on his two sons since 15.07.2006, it is considered appropriate to award a sum of Rs 12,000/- per month as maintenance each to the applicant nos. 2 & 3 from 01.08.2007, to be paid by the non-applicant to the applicant no. 1, pendent lite disposal of the petition. The expenses already incurred by the non-applicant only towards the school fees of the children post 01.08.2007 shall be deducted from the amount awarded. Any amount payable in any other proceedings as maintenance to the applicant nos. 1 & 2 shall be adjustable against the amount awarded. The application u/s 24 of the HMA, 1955, as amended, filed by the applicant is disposed of accordingly.”

3. Aggrieved by the said order, petitioner has filed this

petition before me.

4. Vide its decree and judgment dated 30th March, 2009, petition for divorce has been finally decided by the Trial Court in favour of the petitioner granting her decree of divorce as prayed for. With the disposal of the divorce petition on merits on 30th March 2009, impugned order of the Trial Court also came to an end.

5. Learned counsel for the petitioner has submitted that children have grown up and their expenses have increased. It cannot be believed that respondent is earning only Rs.52,700/- per month as per salary certificate submitted by him whereas admittedly he was drawing a salary of Rs.2.8 lacs per month in 2007. It is not disputed that petitioner owns a company, called Cinnamon Sprinkle since July, 1996, for running the business of agent (an Intermediary between buyers and manufacturers). Prior to that, she was working in various export houses as a Fashion Coordinator/Merchandiser since December 1993. It is pertinent that before deciding the application, Trial Court had recorded the statement of the petitioner under Order X of the Code of Civil Procedure. Statement of the petitioner recorded by the court is very relevant for proper disposal of this petition. Her statement reads as below:-

“684/04

**STATEMENT OF IKJOT CHATWAL,
W/O. SH. BALBIR CHATWAL, AGED 45
YEARS, R/O. A-336, GROUND FLOOR,
SHIVALIK, MALVIYA NAGAR, NEW
DELHI.**

ON S.A.

After my schooling, I have done a Diploma in Textile Designing from South Delhi Polytechnic in 1983. In December, 1983, I took up a job of Fashion Coordinator with an export house called Spectrum Trend in Okhla. I was earning approx. Rs.1200/- per month. I worked here for a year and a half. I joined as a Fashion Coordinator in a buying house called Impulse in 1984 end. My salary here was Rs.1700/- per month. I worked here for one year. I joined as a Merchandiser with a buying house called Georgio Kauten. I worked here from 1985 to 1988 and was getting a salary of approx. Rs.3,000/- per month initially and thereafter, I was getting Rs.4,000/- per month. While I was in this company, I attended night classes and did a four month Course in Dress Designing from NIFT, Delhi. In 1988, I joined a buying house called Design Tech as a Merchandiser and was getting a salary of Rs.5,000/- per month. I worked here from 1988 to February, 1990. From April, 1990 till October, 1990 end I worked as a Sampling Coordinator with RMX Joss and was earning Rs.5,000/- per month. I worked with a buying house in Jor Bagh as a Merchandiser from July, 1991 to July, 1992. I joined a buying company called Mondial India as a Merchandiser in 1992, I worked here till July, 1996. My initial salary was Rs.8,000/- per month. When I left the company in 1996, my salary was Rs.15,000/-. In July 1996, I started my own company namely Cinnamon Sprinkle doing the work of buying agent. My job is that

of an Intermediary between buyers and manufacturers. My company does not own any office. I have taken a premises on rent as my company's office in April, 2007 in 4A, Ground Floor, Shahpur Jat, New Delhi-49. I am paying a rent of Rs.40,000/- per month. The total area of this premises is 1700 sq. feet. I have nine employees. I have four Merchandiser Coordinators. The salary of one Merchandiser Coordinator is between Rs.15,000/- to 20,000/- per month each. There are two Quality controllers, the average salary I am paying each is Rs.14,000/- to 15,000/- per month. I have one Assistant, whom, I am paying a salary of Rs.16,000/- per month. I have a Receptionist, whom I am paying Rs.5,500/- per month. I have a Peon, whom I am paying Rs.2,700/- per month. I have a Driver, whom I am paying Rs.5,500/- per month.

I am staying in the abovementioned address, which is a flat measuring 180/190 sq. yds. This flat was taken by me on rent in October, 2003. Initially, I was paying Rs.11,500/- per month as rent. In 2006, I am paying a rental of Rs.15,000/-. Since October 2006, I am paying Rs.17,000/- per month. The landlord has increased the rent to Rs.25,000/- since March, 2008. I own a car, which is a Hyundai Accent. I bought it in 2005. I am got the same financed through ICICI Bank. The price of the car was approx. Rs.5,20,000/-. My company's current account is in Canara Bank, SDA Market and ABN Amro Bank, Barakhamba Road, I have my personal account in Oriental Bank of Commerce, Saket. I am not a member of any Five Star Hotel. I hold a discount card of Hyatt Regency Hotel, which enables me to get discounts on lunches and dinners in the said hotel.

I went to USA for four days in January, 2008. In January 2008, I went for two days to

Paris. In both the places, I stayed in the hotel. My brother paid for my stay in the USA. He also paid for my tickets. In Paris, I paid 70 Euros per day for the hotel. In January 2007, I went for 4/5 days to USA and Paris. In Paris, I went to attend a home goods fair. In July 2007, I went for 2 days to Holland for a business meeting with a buyer and for 5 days to the USA for the home goods fair. In September 2007, I went for 4 days to Paris and Italy to attend a home goods fair.

As on date, there is a loan of Rs.34 lacs taken by me for running my business and personal affairs. On an average, I am earning Rs.25,000/- to 30,000/- per month. I am spending approx. Rs.25,000/- to 30,000/- per month on an average on both the children. This is other than their school and tuition fees.

The school fees for my younger son Kabir was paid by the respondent to the Vasant Valley School for the academic year 2007 while the school fees for my elder son Arjun was paid to Lawrence School, Sanawar was paid by me. I paid Rs.1,25,000/-. The respondent had paid the fees for the term, it was either in 2006 or 2007.

I have received two cheques of Rs.2,50,000/- each from the petitioner in June, 2007 towards the children expenses. The respondent paid me a cheque of Rs.15,000/- to me in November, 2007 for the registration fees of Kabir for Sanawar. The respondent paid a sum of Rs.17,700/- for the tuition fees of Kabir for certain months in 2007. The respondent paid Rs.4,000/- to the Delhi International Football League in September, 2007 for the two sons. The respondent gave a Play Station-III, Sony make on the birthday of Arjun. He has been giving birthday gifts to both the children. The respondent has paid for the football of both the children at Chanakyapuri in June, 2007.

The respondent did incur medical expenses towards the two children in 2007. In 2006, the respondent paid Rs.86,000/- to the Vimhans Hospital for the treatment of the elder son Arjun. I made an expenditure of approx. Rs.12 lacs for the treatment of Arjun in 2006. Arjun was suffering from a complicated bacterial infection. The respondent took both the children for four days in June, 2007 to Thailand. I cannot recall what was my gross earnings mentioned in the ITR for the year 2006-07. I have been an income tax assessee since I have started working.

RO&AC
ADJ/Delhi/08.05.08”

6. Thus, it is clear that petitioner is financially independent and is having handsome income from her business. Hence, petitioner, being self-employed having good income, is equally liable to share day-to-day and other expenses of the children.

7. Respondent has been sharing expenses of the children throughout including their school fees. It is also not disputed that respondent had paid for medical treatment of his elder son during his hospitalization and surgical operation in Vimhans Hospital in June, 2006. It is also not disputed that elder son has now gone abroad to pursue his further studies for which parties got sanctioned an educational loan as co-borrowers from the bank to ensure that there was no financial problem for the child to pursue his studies. It is

relevant to note that though petition for divorce was filed in 2004, application for maintenance under Section 24 of the Act was filed only in July, 2006. Even before filing of this application, respondent had been sharing expenses of the children. Even during the pendency of the application before the Trial Court, respondent has been sharing the educational expenses of the children besides other.

8. Under these circumstances, I find no reason to interfere in the order of the Trial Court, whereby maintenance of Rs.12,000/- per month was awarded to each child w.e.f. 1st August, 2007. Court had passed this order keeping in mind the fact that even after filing of the application, respondent has been meeting educational and other expenses of his sons.

9. Hence, I find no merits in this petition. The same is accordingly dismissed.

CM No.3738/2009 (for direction)

10. Since petition has been dismissed, this application has become infructuous. It is accordingly disposed of.

**ARUNA SURESH
(JUDGE)**

**FEBRUARY 03, 2010
sb**