

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

+ CM(M) 474/2010 & CM Nos.6374-75/2010

Date of Decision: May 04, 2010

SANGEETA MEHTA Petitioner
Through: Mr.M.L.Kasturi, Advocate.
versus

RAJNEESH MEHTA Respondent
Through: None.

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CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

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| (1) | Whether reporters of local paper may be allowed to see the judgment? | |
| (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

ARUNA SURESH, J. (Oral)

1. Parties to the petition were married on 5th October, 2005 according to Hindu Rites and Ceremonies. A male child was born out of the wedlock of the parties on 16th June, 2007. Due to quarrels and fights, parties could not live together and separated. Respondent filed a petition for divorce against the petitioner. In the said petition, an application under Section 24 of the Hindu Marriage Act (hereinafter referred to as 'HM Act') was filed by the

respondent, wherein Trial Court awarded maintenance only for the child at the rate of Rs.1,500/- per month.

2. Mr.M.L.Kasturi, counsel for the petitioner has contended that petitioner is financially dependent upon her mother, sister and maternal uncle and she is not in a position to maintain herself and her minor child. It is argued that petitioner is a temporary teacher in a private school and for her absence from duty she is not provided with any salary. He submitted that school does not issue any salary slip which could be produced in the court to show the actual salary of the petitioner. According to him, Trial Court went wrong when it rejected the claim of the petitioner for maintenance on the ground that she was employed for gain. It is also submitted that Trial Court failed to consider the fact that respondent is a man of means as he is co-owner of three properties and is earning more than Rs.20,00,000/- (Twenty Lakhs) per month.

3. Contentions of the petitioner are unsustainable as she has failed to produce on record any document to substantiate her claim. Trial Court had rejected claim of the petitioner for her maintenance, observing that she had not placed any document on record to substantiate her claim. She has failed to file her salary slip to indicate that she is temporarily employed as a Teacher and is

earning a meagre amount of Rs.6,000/- per month.

4. Every endeavour was made to find out actual income of the petitioner and if she was an income-tax assessee. Petitioner is a well qualified woman and must be getting a handsome salary as a teacher as per the guidelines issued by the Education Department. Deposit slips placed on record did not indicate that petitioner is being provided maintenance by her mother, sister or uncle. Deposit slips indicate that more than a sum of Rs.2,000/- was being deposited every month in the account of the petitioner . In July, 2008 Rs.4,000/- were deposited, in August, 2008 Rs. 1,500/- were deposited whereas in September 2008, a sum of Rs.4,000/- was deposited in the account of the petitioner. Generally, every month Rs.4,000/- have been deposited in her account. Source of income of mother of the petitioner is not known. Why uncle of the petitioner should support him goes unexplained specially when according to the petitioner, her mother and sister are financially supporting her. It is possible that the amount deposited in her account from time to time by her mother, sister or may be uncle, is part of her own salary and not as financial aid given to her by her family members.

5. While dismissing claim of the petitioner for her maintenance, Trial Court observed:-

“ Admittedly, the respondent is working as a teacher in Aster Public School, Delta-II, Greater Noida, U.P. She has, neither in her application nor in her rejoinder stated the salary which she gets from the school. She has also not filed any document in this regard from the school authorities. Her contention that the said job is a temporary job is also not supported by any document. The respondent has, therefore, deliberately concealed her nature of job and income from this Court.

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It is also expected of the applicant spouse to approach the Court with clean hands and disclose her earnings specifically in her application. The respondent in the present case has not done so deliberately.

In view of the same, I am of the opinion that the respondent is disentitled to claim any alimony from the petitioner. Now, the question remains as to whether or not she is entitled for alimony for the minor children who stays with her. It is the joint responsibility of both the parents to look after and maintain the child. The petitioner, therefore, is liable to provide maintenance for the upbringing and education related expenses of the minor child. I, therefore, feel that the petitioner should pay a sum of Rs. 1500/- per month to the respondent towards the maintenance and education related expenses of the minor child.”

6. As regards immovable properties allegedly owned by the respondent at Greater Noida, Greater Kailash and Defence Colony, Trial Court has not given any observations. However, apparently petitioner could not substantiate her plea that respondent

has rental income from the said properties and in all he is earning about Rs.2,00,000/-. The fact that respondent owns immovable properties, would not make him bear the liability to pay maintenance under Section 24 of the Act. A husband is required to maintain his wife from his income. 'Income' means some financial benefit accruing to the husband, may be in cash or kind from the movable assets but, in no manner, it includes immovable property. Rental income, if any, of the respondent could be considered as his income added to his other income from his other sources.

7. As pointed out above, petitioner has not been able to substantiate her averment that respondent is owner of three separate properties and is having income of about Rs.2,00,000/-.

8. In '*Shakti Pershad Vs. Ratna Pershad*', 2003 1 AD (Delhi) 697, it was observed:-

“9. Section 24 of the Hindu Marriage Act provides establishment of two essential conditions to enable the court to pass an order of pendente lite maintenance and award the expenses of the proceeding in favor of the husband or wife. These are that the husband or wife does not have independent income to support him/her and that the interim maintenance and the expenses of the proceedings are to be fixed having regard to the

income of both the spouses. In the divorce petition the respondent wife has indeed alleged that the petitioner husband is not running any business. His factory has closed down. The bank from which loan was taken for the factory had started proceeding for its recovery before the Debt Recovery Tribunal. The money has not been paid. It is further alleged by her that the petitioner had stopped giving her money for meeting the household expenses since 1994. The petitioner, however, in his reply has submitted that he did not have income since 1998. Certain more facts are worth noticing. The petitioner husband belonged to a very rich family of Delhi. He owns ancestral property in Old Delhi and also owned a big house in Friends Colony East. Anyhow owning property itself will not make the petitioner saddle him with the liability to pay the maintenance under Section 24. The petitioner would be liable to pay if he has income. The word "income" used in this Section 24 of the Act is of widest amplitude. The income may be in cash or kind but it has to be an accrual from the movable or immovable assets. It will definitely not include the immovable or movable property itself. For instance the wages, salary, interest or dividend, agricultural produce of a land, the fruits from fruit bearing tree or orchard, the rent from the house etc will be income. Section 24 uses the word "income" juxtaposed the words 'income and property' used in Section 25 of the Act. The income and the property or capital assets, as such, are not one and the same thing. A spouse may own huge immovable properties of immense value but if there is no yield or accrual

of interest or rent they would not be reckoned for calculating the amount of maintenance. But if the spouse has money in its hand may be by the sale proceeds of any immovable or movable property which he or she is using for meeting the personal expenses or the expenses of the household then that could certainly be taken into account. Shares or bonds may not be included in the term income but what was yielded in the shape of dividend or interest would become income.....”

9. Under these circumstances, when petitioner is employed for gain and in the absence of any authentic evidence to indicate the actual income of the respondent, Trial Court, considering the joint liability of the parents to look after the child, reasonably fixed maintenance for her at the rate of Rs.1,500/- per month.

10. I find no reason to interfere in the impugned order of the Trial Court. Hence, petition is dismissed accordingly.

CM Nos. 6374/2010 (for stay) & 6375/2010 (for exemption)

11. With disposal of the petition itself, both these applications have become infructuous and the same are accordingly dismissed.

**ARUNA SURESH
(JUDGE)**

MAY 04, 2010/sb