

30.

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

% Date of Judgment 20th October, 2010

+ CM(M) 354/2009

ANJAN CHOWDHURY Petitioner

Through : Petitioner in person.

versus

SHARABANI CHAKRABORTY Respondent

**Through : Mr. Jagmohan Sharma and Ms. Rajni
Yadav, Advs. along with the respondent.**

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether reporters of local papers 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?

G.S.SISTANI, J (ORAL):

1. Present petition is directed against the order dated 12.2.2009 passed by learned Additional District Judge on an application filed by the respondent (wife) under Section 24 of the Hindu Marriage Act in HMA No.262/2007 whereby the petitioner was directed to pay maintenance to the respondent @ ₹5000/-, per month, from the date of filing of the application.
2. Brief facts of the case, as set out in the present petition, are that marriage between the petitioner and respondent was solemnized on 11.7.2003. Parties are stated to have separated from each other in the month of August, 2005. Respondent (wife) is stated to have filed a petition for grant of divorce under Section 13(1)(ia) of the Hindu Marriage Act in the Month of April, 2007. Thereafter an application was filed by the respondent (wife) in the month of

September, 2007, under Section 24 of the Hindu Marriage Act for maintenance. By an order dated 12.2.2009 (hereinafter referred to as "impugned order") learned trial court has allowed the application of the respondent and directed the petitioner to pay a sum of ₹5000/-, per month, to the respondent towards maintenance from the date of filing of the application.

3. This court while issuing notice on 27.4.2009 had observed as under:

".... After some arguments, learned counsel for the petitioner states that petitioner is interested in reconciliation with respondent-wife.

Issue notice to respondent, returnable for 18th May, 2009. Keeping in view the petitioner's desire to resolve the matrimonial dispute, I direct petitioner and respondent to be personally present before this court on the next date of hearing.

Learned counsel for petitioner further states that even though respondent-wife had a much higher income during the years 2005-2006 and 2006-2007, petitioner will pay the maintenance amount as directed by trial court provided that petitioner is given the option to clear outstanding dues in regular monthly installments....."

4. The parties appeared before this Court on the next date of hearing, however, the matter could not be resolved. Subsequently, petitioner filed an application being CM No.10134/2009 seeking clarification and modification of the order dated 27.4.2009, which application was dismissed with costs on 27.7.2009. When the matter was listed on 9.10.2009, the same was referred to Delhi High Court Mediation and Conciliation Centre, however, talks of compromise did not materialize.
5. The petitioner, who appears in person, submits that the learned trial court has failed to take into consideration that the income of

the respondent is more than his income. According to the petitioner, during the assessment years 2005-2006, the net income of the respondent was ₹181045/- while his net income was ₹117679/-. Similarly for the assessment years 2006-2007 respondent's net income was ₹121745/- and his net income was ₹137179/-. Petitioner further submits that respondent has been making donations from time to time. A sum of ₹21000/- was donated in April, 2004, and ₹30000/- in August, 2009. The respondent has also been paying LIC premium in the sum of ₹26100/-. Respondent has also been giving loans and advances to the persons. Besides this, respondent has purchased a car in the year 2009 and also purchased jewellery, and has an office at Safdarjung Development Enclave, all of which would show that the respondent has sufficient independent income to maintain herself.

6. Learned counsel for the respondent submits that the allegations made by the petitioner are baseless and wild. Counsel further submits that at the time when the application filed by the respondent under Section 24 of the Hindu Marriage Act was heard not even a single document was placed on record by the petitioner in support of his allegations. Counsel also submits that petitioner is working as an Assistant Engineer with CPWD and has now been posted with the PWD. Counsel next submits that present salary of the petitioner is more than ₹35000/-, per month.
7. It is contended by counsel for the petitioner that it has not been denied by the petitioner that he owns two properties – one at A-281, Palam Vihar, admeasuring 55 sq. yds.), Gurgaon (Ansal

property), and another at Khasra No.11/8, Village Haibatpur, New Delhi, which have been purchased by him out of his income. Petitioner submits that the property situated at Gurgaon was inherited by him and he has not purchased the same.

8. The petitioner submits that it is unbelievable that a person, who is earning barely ₹62542/- would pay an insurance premium of ₹26000/-, annually. Petitioner further submits that it is common knowledge that self-employed people do not disclose the correct and true income and, thus, the income tax return of the petitioner is unreliable.
9. Learned counsel for the respondent submits that the income tax returns, sought to be relied upon by the petitioner, do not reflect the correct and true picture in view of the fact that after the parties had separated, the respondent is unable to carry out her professional activities on account of her mental condition, for which the petitioner has been responsible. Counsel further submits that income tax returns, sought to be relied upon by the petitioner, are seven months prior to the period when the application for maintenance was made before the trial court and, thus, rightly not considered by the trial court, whereas during the relevant period the income tax return of the respondent would show that the net income of the respondent was only ₹62542/-, which is much below the income of the petitioner.
10. Learned counsel for the respondent has clarified that the donation of ₹21000/- was made in the year 2004 soon after her marriage, which is evident from page 75 of the paper book, and similar

donation in the sum of ₹31000/- was also made by the respondent for religious purposes to Guruma. Counsel further submits that the respondent had got herself insured even prior to her marriage but she has to pay the insurance premium in spite of her financial hardship, else the policy would lapse, which would put the respondent to a further loss and leave her without any security.

11. Learned counsel for the respondent has also pointed out that the sole aim and purpose of the petitioner is to harass and malign the respondent. Counsel further submits that petitioner has no intention to settle the disputes and he has been shifting his stand, at the time of grant of bail, the petitioner had agreed to pay a sum of ₹4.00 lakhs in full and final settlement, however, the petitioner did not stand by his words and moved an application for reducing the amount. The petitioner submits that he had moved an application for reducing the amount from ₹4.00 lakhs to ₹3.00 lakhs but the respondent failed to agree.
12. I have heard the petitioner, who appears in person, and counsel for the respondent as also perused the documents filed along with the petition. Learned trial court has considered the rival contention of both the parties. The trial court has taken into consideration that during the relevant period the income of the respondent was barely ₹62000/-, per annum. Both parties have made allegations against each other. While the petitioner submits that respondent is earning substantially on account of her legal practice, the respondent has denied the same owing to her being

in a disturbed state of mind. The respondent has alleged that petitioner is earning more than ₹35000/-, per month, today in view of the increase in salary. It has further been submitted that in case the salary was the only income of the petitioner he would not have been able to acquire two properties – one in Gurgaon and another at Khasra No.11/8, Village Haibatpur, New Delhi, which would show that the petitioner has concealed his true income, which may be by illegal means. During the course of hearing an offer was made to the petitioner that whether he is willing to enter into a settlement. The respondent agreed to accept ₹3 lacs. The petitioner declined the offer on the plea that he does not have the means to pay ₹3 lacs. Respondent even agreed to forego the alimony in case the petitioner agrees for a settlement. At this stage, petitioner again declined and wanted the respondent to refund certain amounts paid by him. I am constrained to note that the stand of the petitioner seems to be extremely unreasonable.

13. Having regard to the fact that trial court has considered the rival contentions of both the parties and also taking into consideration that petitioner, who is working in CPWD as an Assistant Engineer with the salary, as has been shown by him, I am of the view that petitioner would not have been in a position to acquire the property at Khasra No.11/8, Village Haibatpur, New Delhi, measuring 100 sq. yards. I find no force in the submission of the petitioner that since the respondent has made a donation or that she is paying insurance premium of ₹26000/-, per annum, she has

sufficient means to support herself. It is not unusual in our society to spend to religious purposes even in case of financial crisis. Respondent has made a donation for religious reasons to Guruma. As far as the insurance premium is concerned respondent has explained that the insurance policy was taken prior to her marriage. In case the respondent is getting support from her close relations, does not mean that the liability of the husband is ceased. I find no infirmity in the order dated 12.2.2009 passed by learned trial court by which respondent has been awarded maintenance @ ₹5000/-, per month. Present petition is without any merit, the same is accordingly dismissed.

October 20, 2010
'msr'

G.S. SISTANI, J.