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

+ CM(M) 449/2009

% ***Date of Judgment 29th November, 2010***

MANI AHUJA Petitioner
Through : Mr. Gagan Mathur and Mr. Ravish Goel, Advs.

versus

ANIL AHUJA Respondent
Through : Mr. N.K Jain, Adv. along with respondent.

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. Arguments were heard on 25.11.2010. Parties sought an adjournment to explore the possibility of a settlement. Today, counsel for the parties submit that there is no possibility of a settlement.
2. Present petition is directed against the Order dated 13.1.2009 passed by learned Additional District Judge – 2 (Central), Delhi, in an application filed by petitioner (wife) under Section 24 of Hindu Marriage Act, in HMA No.1010/2005, by virtue of which, respondent (husband) was directed to pay maintenance @ ₹2500/- per month, to petitioner (wife) and ₹1250/-, per month, for two school going children (total amounting to ₹5000/-, per month).
3. Learned counsel for the petitioner submits that maintenance granted by trial court is extremely insufficient taking into consideration that petitioner is a housewife with no other source of income. Counsel further submits that learned trial court has

failed to take into consideration the family background of the parties and the standard of living, which was being maintained by them in their matrimonial home. Counsel also submits that at the time when the parties were residing together the respondent (husband) was carrying on a business in partnership with his brother in the name and style of M/s Krishna Cords and Cables and this business was being carried out from a property, situated at Village Begum Pur, which belongs to the father of the respondent. Counsel next submits that respondent in a calculated manner and with a view to defeat the orders, which may be passed at first dissolved the partnership firm and thereafter, according to the respondent, started working in a private company with a salary of ₹10,000/-, per month, and thereafter, it is stated that respondent is working with Elite Securities & House Keeping Services at a monthly salary of ₹7,500/-, per month, which he continues to draw till date.

4. It is contended by learned counsel for the petitioner that learned trial court has failed to take into consideration that respondent was the owner of property bearing no.BD-86, Janakpuri, New Delhi, and two other properties, which were sold by the respondent during the pendency of proceedings. It is further contended that the statement of accounts, copies of which have been placed on record, would show that large amounts were credited into the account of the respondent from time to time and there was no satisfactory explanation rendered by the respondent with regard to withdrawals of the same. It is also contended that respondent was running two cars – Santro and Chevrolet Optra – and further the salary, sought to be relied upon by the

respondent, is incorrect and cannot be relied upon in today's day and age. It is contended that neither it can be expected that a person, who was dealing in lakhs of Rupees would, at this stage, be earning only ₹7,500/-, per month, as a Supervisor.

5. Learned counsel for the petitioner has relied upon a communication dated 16.12.2005 issued by Income Tax Authorities to the respondent, a copy of which has been filed on record, asking the respondent to explain deposit of ₹10.00 lakhs, in cash. Counsel for the petitioner has also placed strong reliance on the statement of accounts of State Bank of India for the period 2.2.2005 to 31.12.2007, which shows credit balance of ₹26,19,417.26p.
6. Learned counsel for the petitioner submits that learned trial court has also failed to take into consideration the amounts, which would have been received by the respondent on the dissolution of partnership on 12.7.2005 of which admittedly the accounts stand settled. Counsel further submits that trial court has also not considered the sale transactions and the sale considerations received by the petitioner with regard to property, which was sold during the time the marital discord between the parties had started.
7. Learned counsel for the respondent has vehemently opposed the present petition. Although, it has not been disputed that at the time of marriage and till the date of dissolution of partnership, the respondent was carrying on the business along with his brother as a partnership firm. Counsel for the respondent submits that on account of change in market with regard to electronic goods the respondent had requested his brother for dissolution of

partnership. Counsel further submits that thereafter the respondent had picked up a job with M/s Balaji Enterprises at a monthly salary of ₹10,000/-, per month, and thereafter w.e.f. October, 2007, he is working with M/s Ellied Securities & House Keeping Services at a monthly salary of ₹7,500/-, per month. Counsel next submits that reliance of the communication dated 16.12.2005 by counsel for the petitioner is misplaced in view of the fact that the said communication pertains to the financial year 2004-2005 and not for the current period.

8. It is submitted by learned counsel for the respondent that petitioner has misread the statement of accounts to show a credit balance of ₹26,19,417.26p whereas this figure is only the statement of summary for the period of the statement of account. It is further submitted that keeping in view the present status of the respondent, the amount of maintenance fixed by the trial court is justified.
9. I have heard learned counsel for the parties and also perused the pleadings as well as the annexures filed along with the pleadings in support of their rival contentions. At the time of deciding an application under Section 24 of Hindu Marriage Act, the Court is to take into consideration various factors, which have been culled out by various courts on the basis of a judgment rendered by the Apex Court in the case of ***Jasbir Kaur Sehgal vs. District Judge, Dehradun and Ors.***, reported at 1997 (7) SCC 7 wherein the Apex Court has also observed that “*where diverse claims are made by the parties some conjectures and guess work by court are permissible*”. 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."

10. Relying on this judgment, a Single Judge of this Court in the case of **Bharat Hegde v. Saroj Hegde**, reported at 140 (2007) DLT 16 had culled out following 11 factors, which can be taken into consideration for deciding the application under Section 24 of Hindu Marriage Act, relevant portion of which reads as under:

8. Unfortunately, in India, parties do not truthfully reveal their income. For self employed persons or persons employed in the unorganized sector, truthful income never surfaces. Tax avoidance is the norm. Tax compliance is the exception in this country. Therefore, in determining the interim maintenance, there cannot be mathematical exactitude. The court has to take a general view. From the various judicial precedents, the under noted 11 factors can be culled out, which are to be taken into consideration while deciding an application under Section 24 of the Hindu Marriage Act. The same are:

- (1) Status of the parties.
- (2) Reasonable wants of the claimant.
- (3) The independent income and property of the claimant.
- (4) The number of persons, the non applicant has to maintain.
- (5) The amount should aid the applicant to live in a similar life style as he/she enjoyed in the matrimonial home.

- (6) Non-applicant's liabilities, if any.
- (7) Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.
- (8) Payment capacity of the non-applicant.
- (9) Some guess work is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.
- (10) The non-applicant to defray the cost of litigation.
- (11) The amount awarded under Section 125, Cr.P.C. is adjustable against the amount awarded under Section 24 of the Act?

11. The factors to be considered while deciding an application under Section 24 of Hindu Marriage Act can never be exhaustive and the courts must consider the facts of each case. The following undisputed facts which emerge are that marriage between the parties was solemnized in the year 1996. Out of the wedlock between the parties a son and a daughter were born, who are presently 13 and 14 years of age, respectively, and are studying in a private school. Parties separated in the month of October, 2005. Before the trial court respondent has failed to establish that petitioner wife has any independent source of livelihood or income. The petitioner is to maintain herself and two school going children. I find force in the submission of learned counsel for the petitioner that a total sum of ₹5000/- for maintenance of the wife and two school going children is extremely insufficient as besides food and other day-to-day expenses, the petitioner has to pay for school fee of the children, transport, uniform and other expenses claimed by the school. The short question, which has come up for consideration, at this stage, is whether the Court should have believed the statement made by the respondent on the basis of an ESI Certificate that respondent is earning ₹7,500/-, per month, since October, 2007. If this figure was correct, the present petition

would have been filed by the respondent, as it would be impossible for him to pay ₹5,000/-, per month, as maintenance to the petitioner out of total salary of ₹7,500/-, per month. Thus, I find the salary certificate, sought to be relied upon by the respondent, to be unreliable and incorrect, it is also not expected that a businessman, in whose account large amounts of money are being credited, to take up a job of only ₹7,500/-, per month, and also it is unreliable that since October, 2007, neither the respondent requested for a raise in the salary nor the employer has increased the salary. Respondent is unable to answer that in case the salary of a Supervisor is ₹7,500/-, per month, what would be the salary of a Peon or a Sweeper in his office. The trial court has also not taken into consideration the fact that at the time of dissolution of partnership, which *prima facie* it appears was dissolved with a view to avoid making payment of maintenance as the matrimonial discord between the parties had already commenced and secondly the reason stated for seeking dissolution of partnership was that there was a change in the electronics market. Nothing has been placed on record in support of these pleas nor any accounts statement has been placed on record to show losses suffered by the partnership, nor it is expected that the other brother would carry on with the same business if this market has changed. I further find that there is no explanation rendered nor disclosure made by the respondent as to what amounts were received by him on dissolution of the firm, what was his capital in the firm and amount received in lieu of goodwill of the firm, as admittedly the firm was taken over by his own brother. There is also no explanation with regard to amounts

received by the respondent on sale of the property no.BD-86, Janakpuri, New Delhi. Although the trial court in paragraph 16 of the order has noticed that a Sale Deed was executed on 12.4.2007 with regard to the abovesaid property.

12. I have also carefully perused the statement of accounts. Although I find force in the submission of learned counsel for the respondent that statement of accounts does not show the current balance of ₹26,19,417.26p, but it shows the credit entries of amounts of ₹1,00,000/- on 27.1.2007; ₹23,000/- on 9.2.2007; and, ₹1,60,000/-, ₹45,000/-, ₹68,500/- and ₹24,500/- on 27.4.2007, during the period when the respondent is stated to have been earning only ₹7,500/-, per month. Recognising the fact that parties do not give the correct income, the Apex Court has observed that it is open for the court to do some guess work to arrive at a figure while disposing of such an application.
13. While learned counsel for the petitioner has urged before this Court that family of the respondent owns many immovable properties, details of which have been given, however, I do not consider it appropriate to club the same at this stage. It seems that petitioner has systematically sold his property, thereafter dissolved his partnership firm and thereafter relied upon a ESI Certificate to show that he is earning ₹7500/-, per month, which is not convincing. Accordingly, having regard to the aforesaid factors, the maintenance of the wife and both the children are fixed at ₹15,000/-, per month, to be paid by the respondent to the petitioner from the date of filing of the application under Section 24 of Hindu Marriage Act. All arrears shall be cleared by the respondent in four equal instalments within two months from

today.

14. Petition stands allowed in above terms.

NOVEMBER 29, 2010
'msr'

G.S.SISTANI,J