

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

+ CM (M) 492/2009

Date of Decision: May 11, 2010

ARCHANA SINGH Petitioner
Through: Mr. Peeyush Kalra, Adv.
with Mr. Sudhindra Tripathi, Adv.
versus
MAHESH KUMAR Respondent
Through: Respondent in person.

**% 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)

CM (M) 492/2009 and CM APPL No.7635/2009

1. Respondent husband filed a petition under Section 9 of the Hindu Marriage Act (hereinafter referred to as 'Act') against the Petitioner wife. In the said petition, Petitioner filed an application under Section 24 of the Act. Before the application could be decided, main petition under Section 9 of the Act was withdrawn by the Respondent on 11.10.2007. Thereafter, Court proceeded to hear the parties on the

application under Section 24 of the Act. Vide detailed order dated 16.01.2009, Trial Court granted maintenance @ Rs.10,000/- per month to the Petitioner for the period from 1.10.2006 i.e. the date of filing of the application under Section 24 of the Act till 31.12.2006, the date when she was gainfully employed with M/s. Infogain India Pvt. Ltd. besides litigation expenses of Rs.5,500/-.

2. Dissatisfied by the order of the Trial Court, Petitioner has filed this petition challenging the legality and validity of the impugned order dated 16.01.2009.
3. Mr. Peeyush Kalra, counsel for the Petitioner has submitted that Respondent is drawing Rs.9,30,800/- annually but has not filed his Income Tax Returns which should have been filed so as to ascertain his true salary. He further argued that initially Respondent husband was earning Rs.80,000/- whereas now he claims that he is earning only Rs.5,000/- per month, which is impossible to believe. He further submitted that resignation of the Respondent was accepted by his employer with regret indicating that, he voluntarily left his job, most probably for

better job, better salary and perks. He emphasized that under the circumstances, Trial Court did not correctly award maintenance to the Petitioner wife.

4. Respondent who appeared in person countered the submissions of the counsel for the Petitioner stating that he resigned from M/s. Infogain India Pvt. Ltd. w.e.f. 31.10.2006 and currently he was unemployed. He pointed out that Petitioner is working since April, 2006 and is employed for gain which is evident from her Bank statement placed on the record. Respondent rather disputed the correctness of the impugned order on the grounds that the maintenance was awarded for the period 1.09.2006 till 30.11.2006 while services were terminated on 31.10.2006 and she was employed for gain and is earning about Rs.7,347/- which fact was admitted by her in her application for review.

5. While granting interim maintenance u/s. 24 of the Act, the Court has to consider:-

- (i) Status of the parties.

- (ii) Reasonable wants of the claimant.
- (iii) The independent income and property of the claimant.
- (iv) The number of persons, the non applicant has to maintain.
- (v) The amount should aid the applicant to live in a similar life style as he/she enjoyed in the matrimonial home.
- (vi) Non-applicant's liabilities, if any.
- (vii) Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.
- (viii) Payment capacity of the non applicant.
- (ix) 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.
- (x) The non applicant to defray the cost of litigation.
- (xi) The amount awarded Under Section 125 Cr.P.c. is adjustable against the amount awarded under Section 24 of the Act.

6. While granting maintenance, The Trial Court relied up '***Bhart Hedge vs. Smt. Saroj Hegde***', ***140 (2007) DLT 16***. Reference is also made to '***Sanjiv Sangwan vs. Ms. Sangeeta Sangwan***' ***143(2007) DLT 306***.

7. Thus, it is clear that the Court should not award maintenance which is punitive in nature. Maintenance should be such which aids the applicant live in a similar life style which she or he enjoyed in the matrimonial home. It should not expose non-applicant to unjust contempt or other coercive proceedings. The quantum of maintenance fixed should be reasonable. It should not be so low as to make the order meaningless. While granting maintenance, the Court is conscious of the fact that generally a party does not truthfully reveals its income, especially the self-employed person, or, person employed in the unorganized sector. Truthful income is never disclosed, tax avoidance is another norm. Therefore, while determining the interim maintenance there cannot be any mathematical exactitude. The court has to take a general view in the light of the factors as indicated above.
8. It is an admitted case of the Petitioner that she is employed with Ritika Pvt. Ltd. and getting Rs.8,200/- per month w.e.f. 1.12.2006. At the time when she filed application for interim maintenance, she was getting the said salary. In the year 2009 when the impugned order was passed she was getting about

Rs.10,000/- per month. Respondent was serving as Assistant Consultant with M/s. Infogain India Pvt. Ltd. and getting salary of Rs.9,30,800/- P.A.. He submitted that his resignation was accepted on 21.11.2006.

9. Respondent was examined under Section 10 CPC on 10.07.2007 wherein he disclosed that he was getting salary of Rs.5,000/- per month while serving as a Computer Operator with Kushagra Infotech, Nangal Rai, New Delhi.
10. Trial Court took into consideration the undisputed facts of employment of the Petitioner w.e.f. 1.12.2006. After assessing the evidence of the parties and the documents placed on record, the Trial Court believed that at the relevant time when the application was filed, Respondent was earning Rs.9,30,800/- annually and also that he had resigned from his service and thereafter was employed on a salary of Rs.5,000/- per month. May be that, Respondent tried to conceal his actual income, the fact remains, Petitioner was employed for gain and is presently getting more than Rs.10,000/- per month.

11. The Trial Court awarded maintenance to the Petitioner wife for the period from 1.10.2006 when the application was filed till 31.12.2006 when Petitioner received her first salary, though she was employed w.e..f. 1.12.2006. The quantum of maintenance of Rs.10,000/- awarded by the Court, to my mind is just and reasonable. Rather, if calculated properly Petitioner should not have been awarded maintenance for December, 2006. However, since Petitioner received her salary only on 31.12.006, the Court must have considered the expenses borne by the Petitioner for the said month while awarding maintenance to her.
12. Under the facts and circumstances of this case, I find no illegality or infirmity in the order of the Trial Court which needs any interference by this court in exercise of its supervisory power under Article 227 of the Constitution.
13. Hence, petition being without any merit is hereby dismissed.

**ARUNA SURESH
(JUDGE)**

**MAY 11, 2010
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