

23.

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

% Judgment Delivered on: 28.09.2010

+ CM(M) 441/2009

BALA Petitioner

Through : Mr. Rahul Sharma, Adv

versus

DHIRENDER Respondent

Through : Mr. R.K. Bali, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether the Reporters of local papers may be allowed to see the judgment? **Yes**
2. To be referred to Reporter or not? **Yes**
3. Whether the judgment should be reported in the Digest? **Yes**

G.S.SISTANI, J. (ORAL)

1. Present petition is directed against the order dated 6.1.2009 passed by learned Additional District Judge, East District, Delhi, on an application filed by the petitioner (wife) under Section 24 of the Hindu Marriage Act in HMA No.286/2007 for grant of maintenance. The trial court has fixed the maintenance at ₹8000/-, per month, for the wife and ₹5000/-, per month, for the minor son, who is in the custody of the wife. By the present petition, the petitioner (wife) seeks enhancement of the maintenance awarded.
2. Learned counsel for the petitioner wife submits that learned trial court while fixing the maintenance has failed to take into consideration the status of the parties; the fact that petitioner has to lookafter and bear all the expenses of the minor school going son; the petitioner has no source of livelihood; she is residing with her father and maintaining herself as also her eight year son; she

is only dependent on the respondent husband for maintenance and support; and respondent husband has been awarded compensation for the land acquired in the sum of ₹60.00 lakhs. Counsel further submits that petitioner has now learnt that further compensation in the sum of ₹ 561796/- has also been awarded in favour of the respondent. Counsel for the petitioner wife also submits that petitioner has to pay ₹ 3000/-, per month, as school fee of her minor son, besides she has to incur various expenses for school uniform, books and for extra-curricular activities. Counsel next submits that the respondent husband is a man of means. The respondent is working as a Supervisor in M/s Avis Acqua at Faridabad and besides his salary he is earning huge interest from the amounts of compensation received by him.

3. Learned counsel for the petitioner wife submits that the trial court has completely lost track of the fact that petitioner must enjoy the same standard of living as she was enjoying in her matrimonial home. Counsel further submits that parties were residing at Faridabad in a house, which belongs to the respondent husband, which had all the modern facilities and amenities.
4. Learned counsel for the respondent has opposed the present petition on the ground that petitioner has little or no source of income as he is earning only ₹1500/- per month. It is further submitted that the respondent has left the job in view of the fact that he has contested the elections and has been elected as a Counselor from Faridabad. Counsel also submits that respondent is residing in his ancestral house in the Village at Faridabad. Counsel

next submits that the sum of ₹60.00 lakhs received by the respondent has been invested by him in the land, which has been purchased by him in the name of his mother.

5. Learned counsel for the petitioner while disputing the submissions made by counsel for the respondent points out that on the basis of the copies of sale deeds, which have been placed on record, it can be seen that the respondent has not invested the entire amount of compensation received for the purchase of land in the name of his mother, which fact has also been noticed by the learned trial court.
6. I have heard counsel for the parties and also perused the order dated 6.1.2009 passed by learned trial court. It has been repeatedly held by the courts that while considering an application under Section 24 of the Hindu Marriage Act the Court must consider the means and capacity of a person against whom an order of payment of maintenance is made. While determining the quantum of maintenance, not only the actual income but also the potential capacity must be considered. Court must also take into account the position and status of the parties. The petitioner herein is an able bodied person and has a capacity to earn and maintain his wife. The husband is duty bound and has to ensure that the wife and the minor son are provided a similar style of living as was being enjoyed by them in the matrimonial home. The respondent (husband) owns a house in Fraidabad where the parties were residing. The respondent owns lands which have been acquired and respondent has been awarded compensation to the tune of ₹60.00 lakhs. The

respondent was working with M/s Avis Acqua at Faridabad but he has contended election and has been elected as a Counselor. The above facts indicate the status and the financial capacity of the respondent. It is further common knowledge that large amounts are spent by candidates during election. The respondent has only made a vague allegation that petitioner is running a beauty parlour. No particulars have been furnished by the respondent in support of this plea. The respondent has nowhere denied receipt of the amounts as compensation. It has only been submitted that part of the amount has been invested.

7. In the case of **Jasbir Kaur Sehgal (Smt.) v. District Judge, Dehradun & Others**, reported at (1997) 7 Supreme Court Cases 7, it has been held 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."

8. The trial court has rightly relied upon in **Manish Kumar vs. Mrs. Pratibha**, CM(M)949/2008, but has failed to consider that the maintenance so awarded should not be so low as to make the order meaningless. Taking into consideration the settled position of law on the basis of the judgments rendered by the Supreme Court and having regard to the fact that it is not disputed that the respondent has received more than ₹65.00 lakhs as compensation as his share of the land acquired, the fact that it is not possible for a Counselor to live with a salary of Rs.1500/-, the impugned order dated 6.1.2009 is modified. The respondent will pay maintenance to the petitioner and the minor son @ ₹20000/-, per month. All arrears will be cleared by the respondent within three months from today.
9. Petition stands allowed in above terms.

September 28, 2010
'msr'

G.S. SISTANI, J.