

02.

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

% Date of Judgment 20th October, 2010

+ CM(M) 928/2010

SUNIL MALHOTRA

..... Petitioner

Through : Mr. Alok Bhachawat and Mr. Uday Singh,
Adv.

versus

RASHMI MALHOTRA

..... Respondent

Through : Respondent in person.

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 12.1.2010 passed by Additional District Judge, Delhi, on an application filed by the respondent herein (wife) under Section 24 of the Hindu Marriage Act whereby the trial court has directed the petitioner (husband) to pay maintenance @ ₹ 12500/-, per month, each, to the respondent (wife) and the minor school going child.
2. No notice in this petition was issued, however, on 23.7.2010 a direction was issued to the respondent (wife) to remain present in Court or be represented through counsel. This order was passed only with a view to explore the possibility of some kind of a settlement. On the next date of hearing i.e. 19.8.2010, counsel for the respondent had entered appearance and pointed out that despite the order having been passed on

12.1.2010, no amount has been paid by the petitioner to the respondent towards maintenance since January, 2009, i.e. the date of filing of the application under Section 24 of the Hindu Marriage Act. Learned counsel for the petitioner, on instructions from the petitioner, who was present in the Court, agreed to pay 50% of the arrears to the respondent within 30 days. The petitioner also agreed that without prejudice to his rights and contentions he will pay a sum of ₹15000/-, per month, to the respondent towards maintenance from August, 2010, onwards. Subsequently, the petitioner made a review petition seeking review of the order dated 19.8.2010, which was dismissed by this Court on 22.11.2010.

3. Learned counsel for the petitioner submits that the trial court has exceeded its jurisdiction while passing the impugned order. Counsel further submits that the learned trial court has failed to take into consideration that respondent is also gainfully employed and she is capable of maintaining herself. Counsel next submits that the learned trial court has ignored the income tax return of the past years and despite coming to a finding that petitioner is earning only ₹28500/-, per month, the court has come to the conclusion that petitioner would be earning not less than ₹50000/-, per month. Counsel has further submitted that since the respondent has concealed her income before the trial court, on this ground alone the application for maintenance should have been dismissed.

4. It is contended by counsel for the petitioner that initially the petitioner was paying education expenses of the son, who was studying in GD Goenka School, of which the fees is approximately ₹1.00 lakh, per annum.
5. During the course of hearing, it is not disputed that school fees of the son is not being paid by the petitioner however, at this stage, counsel for the petitioner submits that petitioner is not aware in which school his son is studying. Learned counsel for the petitioner submits that petitioner has not met his son even before the Mediation Centre.
6. I have heard counsel for the petitioner and also perused the impugned order. The case set up by the respondent in the application filed under Section 24 of the Hindu Marriage Act before the trial court was that petitioner herein (husband) was carrying on the business of manufacturing ladies suit in the name and style of M/s Veenu Embroidery at 412, Kohat Enclave, Pitam Pura, Delhi, and continued the same till the year 1995. Thereafter the petitioner converted the same into a firm, known as, M/s Kalakriti and continued to carry out his business from the said premises. It is alleged that petitioner is also running a factory at 288, Shivaji Marks above Laxmi Timber, Pitampura, Delhi, and has employed more than 15 employees. Petitioner is stated to be earning a sum of ₹5 to ₹6 lakhs, per month, from the wholesale business and ₹1.00 lakh, per month, from the retail business. Thus, according to the respondent (wife) the income of the petitioner (husband) is not less than ₹2.5 lakhs,

per month. In support of her plea that petitioner is used to a luxurious lifestyle, it was contended before the trial court by the respondent that the petitioner owns immovable properties outside Delhi and maintains two cars - Toyota Innova and Maruti Swift. It was also contended before the trial court that income tax returns, which have been placed on record, show that petitioner's gross income is ₹340954.62p, per annum. Out of this amount, petitioner is stated to be paying fees of the minor son @ ₹1.00 lakhs, per annum, thus, reducing the income of the petitioner to barely ₹1.40 lakhs, per annum. Petitioner had also taken a plea before the trial court that he is running the business from a rented premises and the rent of the premises is ₹5000/-, per month. Petitioner had also disputed the fact that he is residing at Kohat Enclave in view of the fact that his parents had disowned him.

7. Learned trial court has taken into consideration the following factors before passing the impugned order that:

- (a) Admittedly petitioner is a sole proprietor of M/s Kalakriti, which is engaged in manufacturing ladies suits and allied items;
- (b) The petitioner engages labour, which are not more than 10 at a time; and
- (c) The business of the firm is earning approximately ₹5.00 to ₹6.00 lakhs, per month.

8. The trial court has also considered the income tax return, which has been filed by the petitioner herein. The trial court has

rightly not relied upon the income tax return, as a person who earns ₹340952.62p, per annum, and after payment of school fees of ₹1.00 lakh of the son, he would not be in a position to deposit 33% of the income into the LIC policies (₹64087/-) and PPF account (₹70000/-). Trial court has also considered that there is a debit card entry of ₹1.00 lakh and also that petitioner has given his residential address of Kohat Enclave to the United India Insurance Limited as also in the school of the child. Thus, the trial court has not found force in the submission of the petitioner that his parents have disowned him. I have perused the order of the trial court and find no reason to differ. The petitioner is a successful businessman and is carrying on the business of trade and manufacturing of ladies suits. The petitioner also owns Tata Innova and Maruti Swift. Besides, in my view, the income tax return, sought to be relied upon by the petitioner, does not reflect the correct and true earnings of the petitioner. The law on this subject is well settled.

9. In the case of ***Jasbir Kaur Sehgal vs. District Judge, Dehradun and Ors.***, reported at 1997 (7) SCC 7 the Apex Court has 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 leverage 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. Having regard to the facts of this case and the settled position of law, I find no infirmity in the order dated 12.1.2010 passed by learned trial court. It may also be noticed that despite the petitioner being aware that respondent is looking after her minor son, who is 14 years of age, petitioner has not bothered to pay any maintenance to the respondent from 29.1.2009 till date except a sum of ₹15000/-. On 19.8.2010, the petitioner had made a statement that he would pay 50% of the arrears within 30 days, however, the same has not been paid by him and, thus, violated the statement made to Court. The present petition is without any merit.
11. Accordingly, the present petition stands dismissed.

G.S. SISTANI, J.

October 20, 2010
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