

32.

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

% Judgment Delivered on: 22.09.2010

+ CM(M) 795/2009

SHRI ANIL GOYAL Petitioner

Through : Mr. Pradeep Bhardwaj, Adv.

versus

SMT. ANUPAMA GOYAL Respondent

Through : Mr. Hari Dutt Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to 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 23.3.2009 passed by learned Additional District Judge II, Central, Delhi, on an application filed by the respondent (wife) under Section 24 of the Hindu Marriage Act in HMA No.191/2008 for grant of maintenance. By the impugned Order the trial court has directed the petitioner husband to pay maintenance to the respondent wife @ ₹ 10000/- and to the minor child @ ₹ 7000/- . Aggrieved by the aforesaid order the present petition has been filed.
2. Learned counsel for the petitioner submits that learned trial court has acceded its jurisdiction and failed to take into consideration that petitioner husband was only running a

computer centre and barely earns ₹ 92000/- (Approx.), per annum. Counsel further submits that the impugned order by which the interim maintenance @ ₹ 10000/-, per month, to the wife and ₹ 7000/-, per month, to the minor child was awarded, is in excess and punitive in nature. Counsel also submits that trial court has wrongly considered that the educational institutions are being run by the father of the petitioner, however, they are charitable institutions, which are being run by a society. Counsel next submits that petitioner is not in a position to pay the amount of maintenance. Even otherwise marriage between the parties was solemnized in a simple manner in a Temple.

3. Learned counsel for the respondent has opposed the present petition on the ground that the petitioner has failed to disclose his true income before the trial court as well as before this Court. Counsel further submits that petitioner has not disclosed his designation in the two schools nor he disclosed the income drawn by him from the same. Counsel further submits that petitioner has failed to place on record material documents with regard to the constitution of the schools, the names of the Principals of the Schools and the names of the members of the Managing Committee of the schools. The petitioner has also failed to file any document with regard to the Constitution of the Computer Centre, which is being run by him in the City Senior Secondary School. Counsel also submits that neither any statement of account nor any other

supporting document has been placed on record by the petitioner. Counsel next submits that income tax return of the petitioner does not portray a true picture of his income.

4. It is contended by counsel for the respondent that prior to the marriage of the petitioner the father of the petitioner had written a letter to the father of the respondent, a copy of which has been filed on record, which reads as under:

"Dayan and Goyal	215, Jagat Colony,
Office:	Bhiwani (Haryana)
City Senior Secondary School	01664-242887 (Office)
Hansi Road, Bhiwani	9416059887 (Office)
	01664-254343 (Resi.)
	9416057887 (Resi.)

Dear Friend,

Namaskar,

I have been retired from the post of Senior Manager from Punjab National Bank, Yamuna Nagar. I am running five Senior Secondary Schools (10+2) in Bhiwani (Haryana), and the buildings of the same are self occupied building. My three sons are working at the post of Principals in their own schools. I am having own House and some of the land. Both elders sons have already been married. Third son (Anil Goyal) has been granted legal Divorce. His age is 35 years (Date of birth 04/07/1969, Time 12.15 Noon, Birth Place – Fatehabad (Haryana). His educational qualification is M.A. and height 5'11". If you think fit, then contact us, I want dowry-less marriage.

Yours well-wisher

- SD-

DAYA NAND GOYAL"

5. Counsel for the respondent submits that in this letter, it was stated by the father of the petitioner that he is running five

Senior Secondary Schools. Further it was also mentioned by the father of the petitioner that his sons are working as Principals in their own schools. Counsel for the petitioner has denied that this letter was written by the father of the petitioner. Even otherwise, it is submitted that the father of the petitioner is not a party to the present proceedings.

6. Learned counsel for the respondents has also filed a copy of the lease agreement entered into between the petitioner and the BSNL wherein lease has been executed for installation of a mobile phone tower at a rent of ₹ 5000/-, per month. Counsel has stated that respondent is also dealing with Vastu and he has ample clientage and is earning handsome amount per month.
7. Learned counsel for the petitioner submits that the income of ₹ 5000/-, per month, from the mobile phone tower has been disclosed by the petitioner in an affidavit filed by him, however, the petitioner is entitled to only 1/3rd share of the income from the mobile phone tower.
8. Heard counsel for the parties and also perused the order passed by the trial court as also the documents placed on record. The facts necessary for disposal of the present petition are that the marriage between the parties was solemnized on 17.11.2005. One female child was born out of their wedlock, who is residing with the mother. According to the application filed by the respondent wife under Section 24 of the Hindu Marriage Act petitioner (husband) belongs to a rich family; he

and his family members have five schools in Haryana; petitioner is the Principal of two schools and the income of the petitioner is more than ₹ 2.00 lakhs. Besides, being the owner of acres of agricultural land the petitioner has rental income from BSNL Mobile phone tower installed at one of his premises. The respondent wife is stated to be a house wife with no independent source of income to maintain herself as well as her minor daughter. The petitioner has denied all the claims made by the respondent wife before the trial court. In his reply the petitioner has stated that he does not belong to a rich family, his family does not own five schools and he is not the Principal of two schools. He has further denied that he is the owner of agricultural land or a plot in Haryana. He has stated that one school is being run by Charitable Educational Society of India in which he and his family members are only the office bearers who have no concern with the income of the said school. He has stated that his monthly income is Rs.7000/-.

9. While dealing with an application under Section 24 of Hindu Marriage Act the court must take into consideration that the spouse enjoys the same standard of living as was being enjoyed by he/she in the matrimonial home. The court must also consider that the maintenance which has been awarded should not be punitive in nature and the person should be able to pay the same.

10. 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.”

11. In this case the Court cannot lose track of the fact that besides herself the respondent has to maintain her minor daughter, who is four years of age. While it has not been disputed during the course of hearing that petitioner and his family runs five schools while one of the school is being run by Charitable Educational Society of India in which the petitioner and his

family members are only the office bearers. It is also not disputed that petitioner and his father are the founder members of the society, which runs the schools. Further it is not disputed that the business of computer centre is being carried out in the premises of one of the schools. On a query raised by the Court with regard to the rent which is being paid to the school/society, the explanation rendered is that since the petitioner is running a service to the school no rent is being charged. While dealing with the application under Section 24 of the Hindu Marriage Act the trial court has taken into consideration the settled principle of law. Once the petitioner has admitted that the educational institutions are being run by the father of the petitioner, however, they are charitable institutions, which are being run by a society, the petitioner should have filed relevant documents of the society on record to show the precise role of the petitioner and his family members in the society to enable the court to arrive at a fair decision. As the petitioner has failed to produce the relevant documents, which are in his possession and power with regard to the society running the school, as also the petitioner has failed to clarify on what basis and understanding he is running a computer centre in a school, an adverse inference has to be drawn against the petitioner. Keeping in mind the status of the parties and the fact that respondent has to look after herself besides one minor daughter, I do not consider the amount awarded by the trial court to be

exorbitant. I find no infirmity in the order dated 23.3.2009 passed by the trial court. Accordingly, present petition stands dismissed.

September 22, 2010

'msr'

G.S. SISTANI, J.