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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Judgment Delivered on: 14.09.2010***

+ CM(M) 1130/2008

DHIRENDRA AGGARWAL Petitioner
Through : Mr. Vivek Singh and Mr. Chandra
Prakash, Advs.

versus

SUNITA AGGARWAL Respondent
Through : Mr. Amrit Pal Singh Dhaliwal, 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 15.7.2008 passed by learned Additional District Judge on an application filed by the respondent (wife) under Section 24 of the Hindu Marriage Act in HMA No.659/2005, by virtue of which, the petitioner husband has been directed to pay maintenance @ ₹ 30000/-, per month to the respondent wife.
2. The facts of this case, as noticed by the trial court, are that the marriage between the parties was solemnized on 11.3.1986 and out of their wedlock one girl child was born in the year 1988, who is residing with her father and is being looked after by her father. In the application filed before the trial court, it was stated that the petitioner is a man of

means, he is a rich and wealthy person, having several industries and other business, besides being a Member of Parliament. The petitioner owns many luxurious cars, movable and immovable properties and is earning about ₹ 50.00 lakhs, per annum. By the said application, the wife (respondent herein) had prayed for maintenance @ ₹ 1.00 lakh, per month, and ₹ 50000/- as litigation expenses.

3. It is contended by counsel for the petitioner (husband) that respondent (wife) has an independent source of income and she is the proprietor of a business running in the name and style of M/s Ganpati Enterprises. Besides the respondent wife has fixed deposits of ₹ 9.00 lakhs; ₹ 19.00 lakhs in her PPF account; shares; insurance policy for ₹ 3.00 lakhs; and jewellery worth ₹ 15.00 lakhs. While it is disputed that the petitioner husband owns any industry it is submitted by counsel for the petitioner that at the relevant time being a Member of Parliament the petitioner was earning ₹ 12000/-, per month.
4. Learned counsel for the petitioner has strongly urged before this Court that even the trial court has noticed that the respondent has received ₹ 19.00 lakhs in a PPF account, which was transferred by her on 11.6.2007.
5. According to the petitioner parties had arrived at an amicable settlement; a petition for divorce by mutual consent was also filed; and the petitioner had paid a sum of ₹ 21.00 lakhs plus

other amounts as well to the respondent wife in full and final settlement. However, the matter did not attain finality.

6. Learned counsel for the respondent wife submits that after marriage the parties were residing together at Preet Vihar in a palatial Bungalow, petitioner owns cars like Mercedes Benz, BMW, etc., and thus, the respondent is entitled to maintain the same standard of living as she was maintaining in her matrimonial home. Counsel further submits that the trial court has come to a categorical finding that petitioner is a founder Director of M/s Daya Sugar Mill. Counsel also submits that the respondent wife had moved an application under Order XI Rule 14 CPC seeking directions for the petitioner to file Memorandum and Articles of Association of M/s Daya Sugar Mill, its balance sheet along with audit reports, list of share holders of Ms/ Daya Sugar Mill, details with regard to registration certificate of Mercedes Benz, Hyundai Terracon, Tata Safari and BMW Cars as also copies of Income Tax Return of the HUF. Counsel for the respondent further submits that petitioner husband had filed a false affidavit on 30.4.2008 stating that Memorandum & Articles of Association of M/s Daya Sugar Mill and its balance sheet have no concern with him and the same are not in his possession and power. However, the petitioner filed, on record, the Income Tax Return and balance sheet for the years 2004-05, 2005-06 and 2006-07. In the affidavit dated 2.4.2008 filed by the

respondent, she has denied that she is the sole proprietor of M/s Ganpati Enterprises, which belongs to the mother of the respondent. Counsel also submits that the trial court has also come to the finding that the parties have deliberately concealed the documents and has raised various allegations against each other. Even taking the submission made by the petitioner as correct that he has deposited ₹ 9.00 lakhs in a fixed deposit of the respondent and also deposited ₹ 19.00 lakhs in the PPF account of the respondent wife and also jewellery worth lakhs of rupees, besides share, would show that petitioner is a man of means. Even at this stage the petitioner has failed to categorically state with regard to the stand taken that the petitioner owns the industry, namely, M/s Daya Sugar Mill and M/s Daya Engineering (Sleeper) Ltd. The trial court has come to a finding that the petition for divorce by mutual consent does not disclose the payment of ₹ 21.00 lakhs to the respondent wife. Even taking into consideration that the respondent was given a sum of ₹ 21.00 lakhs the interest which may accrue on this amount may still not be sufficient to take care of the needs of the respondent wife, taking into consideration the status of the parties and the requirements of the respondent wife. Two important factors which must be considered to arrive at the quantum of maintenance are the standard of living of the parties and the capacity and income of spouse from whom maintenance is

sought. 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”*. It is not in dispute that petitioner is a Member of Parliament. Despite filing of an application under Order XI Rule 14 CPC by the respondent wife before the trial court, calling upon the petitioner to file certain documents with regard to his involvement in Daya Sugar Mill, copies of Income Tax Returns and copies of regularization certificate of car (Mercedes Benz, BMW, etc.) the petitioner had failed to place the same on record. The petitioner has placed on record a copy of the petition alleging to have been filed under Section 13(ib) of the Hindu Marriage Act for grant of divorce by mutual consent. Para 7 of the petition reads as under:

“7. That the petitioners are living separately of their own free will and the petitioners are possessed of sufficient means to maintain themselves. That the petitioner no.1 who is Director of M/s Daya Engineering Works (Sleeper) Ltd., Regd: Office 27 A.G. Colony, Kadru, Ranchi (Jharkhand), and its Delhi Office at :A-95, Niti Bagh, New Delhi – 110 049; has made adequate arrangement for the future maintenance of the petitioner no.2 and the petitioner no.2 has agreed of her own free will not to make any claim in future. Therefore the petitioners have agreed to release each other from their liability to maintain the other.”

7. Reading of para 7 quoted above shows that petitioner has admitted that he is a Director of M/s Daya Engineering Works (Sleeper) Ltd. Petition does not disclose the amounts agreed

to be paid or in fact paid to the respondent. Thus, the submission of counsel for the petitioner that the petitioner has paid large amounts to the respondent at the time of signing of petition for grant of divorce by mutual consent, is without any basis. Parties were last residing together at Gulmohar Park, which is in a posh locality of South Delhi. It is settled law that at the time of deciding an application under Section 24 of Hindu Marriage Act the court must consider the status of the parties and the amount required by the wife to live in a similar lifestyle as she enjoyed in the matrimonial home.

8. In the case of ***Jasbir Kaur Sehgal vs. District Judge, Dehradun and Ors.***, reported at (1997) 7 SCC 7, it has been observed that neither of the parties disclose the correct and true income therefore the Courts have to do some guess work to arrive at a fair and just figure. 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."

9. Taking into consideration the facts of this case, the statements of the parties and their standard of living, there is no infirmity in the order of the trial court, by virtue of which, respondent has been directed to pay maintenance @ ₹30,000/- per month. Accordingly, interim order dated 24.9.2008 stands vacated. Petition stands dismissed. It is however, clarified that any observation made in the present order is only for the purpose of deciding the petition under Section 24 of the Hindu Marriage Act.

G.S. SISTANI, J.

September 14, 2010
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