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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CM(M) 98/2011

% ***Judgment Delivered on: 01.04.2011***

JAYANT BHARGAVA Petitioner
Through : Mr. Saurabh Kansal and Ms. Pallavi Sharma,
Advs.

versus

PRIYA BHARGAVA Respondent
Through : Mr. Anil Sharma, Mr. Vinod Kumar and
Ms. Deepayan Monda, Advs.

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 13.12.2010 passed by learned Additional District Judge, Delhi, on an application filed by respondent (wife) under Section 24 of Hindu Marriage Act, by virtue of which, petitioner was directed to pay maintenance @ Rs.10,000/- , per month, to the respondent.
2. Counsel for the petitioner submits that learned trial court has exceeded its jurisdiction by awarding maintenance @ Rs. 10,000/-, per month to the respondent. Counsel further submits that the respondent has misled the court with regard to income of the petitioner by stating that the petitioner is earning a sum of Rs. 30,000/- per month. It is next submitted by the counsel for the

petitioner that the petitioner is working as a Sales Supervisor with M/s Kishan Lal Enterprises and is getting a monthly salary of 6200/- . Counsel also submits that learned trial court fell into error by ignoring the proof regarding income of the petitioner apart from the appointment letter and salary slip of the petitioner which was placed on record.

3. It is submitted by counsel for the petitioner that petitioner is a mere graduate and is still pursuing his MBA through distance learning in order to become a helping hand to his family and take care of his parents and two sisters who are of marriageable age and who are dependent on him. It is next submitted that trial court has failed to take into consideration that petitioner has to look after his parents and help in settling his two sisters. It is also submitted that trial court has also ignored the fact that respondent is capable of earning as she has done a course in interior designing. It is next submitted that the respondent is residing with her parents.
4. Learned counsel for the petitioner has strongly urged before this court that trial court has wrongly assessed the income of the petitioner to be around 30,000/-, per month, while there is absolutely no basis whatsoever for arriving at this incorrect figure.
5. Learned counsel for the respondent submits that petitioner has failed to make out a case for interference under Article 227 of the Constitution of India and there is no infirmity in the impugned order. Counsel further submits that trial court has passed the

impugned order based on correct appreciation of facts and has correctly applied the law to the facts of the case. Counsel also submits that respondent is entitled to enjoy the same status as she was enjoying in her matrimonial home. Counsel next submits that the parents of the respondent had spent a large amount on the marriage of the respondent, which is evident from the fact that besides a Honda City Car various other valuable gifts were given at the time of marriage of the respondent to the petitioner and his family.

6. It is submitted by counsel for the respondent that it would not be expected that the parents of the respondent would marry the respondent to a person, who is barely earning the minimum wages and in turn would spend lavishly on the marriage. It is further submitted that petitioner has willfully concealed the material documents from the trial court, which has forced the trial court into guessing the income of the petitioner, which the trial court was entitled to do in accordance with law laid down by the Apex Court and this Court. It is also submitted that petitioner has not come to court with clean hands. It is next submitted that an application under Order 10 Rule 2 read with Rules 12 and 14 CPC was filed by the respondent before the trial court to direct the petitioner to place documents on record for the correct assessment of the income of the petitioner, however, as noticed by the trial court in para 15 of the impugned order no reply was filed to this application

nor the necessary documents were filed. It is next submitted that in view of the conduct of the appellant the trial court has correctly drawn an adverse inference with regard to the allegations made by the respondent. It is next submitted that trial court has correctly placed reliance on the copies of information downloaded from the internet, which pertain to M/s Rashi Telecom, running at C-3, Pandav Nagar, Delhi. It is next contended by the counsel for the respondent that trial court has rightly observed in the impugned order that a list shows the names of dealers of M/s INTEX. The name of Rashi Telecom is listed at serial no.665, as one of its dealers. It is submitted by the counsel for the respondent that on a perusal of the list, the name of the petitioners appears as the contact person's name and the address is C-3, Pandav Nagar, Delhi, which matches with the address of the petitioner and that of Rashi Telecom appears which is enough to show that the petitioner has an interest in Rashi Telecom and to which there is no satisfactory explanation by the petitioner.

7. Learned counsel for the respondent submits that petitioner had neither in the reply to the petition filed under Section 24 of Hindu Marriage Act nor at the time of hearing of the petition before the trial court had asserted that he is responsible for maintaining and looking after his parents and two unmarried sisters. It is further submitted by the counsel for the respondent that, even otherwise, it is extremely improbable that a person earning barely Rs. 6200/-,

per month, would be looking his after parents, two unmarried sisters and wife and would be maintaining a Honda City Car received by him at the time of his marriage. Counsel further submits that petitioner has not disputed before the trial court that besides working as a Sales Supervisor, he is also helping his mother in the running of the shop.

8. Learned counsel for the petitioner submits that in case it is presumed that petitioner is earning out of the shop which is being run by the mother then the income from the said shop should be divided into six parts and not that the petitioner alone would be earning Rs. 10,000/-, per month.
9. Learned counsel for the petitioner has relied upon **Pradeep Kumar Kapoor v Sbailja Kapoor**, reported at AIR 1989 Delhi 10 and also Civil Revision Appeal No.64/1989 titled as **Ashok Rani v. Rattan Lal** (MANU/DE/0381/1989) in support of his plea that while awarding interim maintenance the Court must take into consideration the fact that spouse is oblige to maintain his brother or sister, who have no source of livelihood.
10. Learned counsel for the respondent, in support of the submission that a fair assessment is to be made and some guess work is permitted by the court while arriving at a conclusion with regard to the income of spouses relied upon **Sudhir Diwan vs. Tripta Diwan & Anr.** reported at 2008 (3) AD 1 wherein the court has upheld the legal proposition that that "where a party does not

truthfully disclose its income an element of conjuncture and guess work has to inevitably enter in the decision making process". The

learned Counsel for the respondent has also relied upon the case of **Raj Kumar Vs. Vijay Laxmi** reported at **95 (2002) DLT 265** wherein the courts have drawn an inference regarding the income of the spouse from the fact that the person is an engineer and is able bodied. The court has observed that the spouse's income was within his/her own special knowledge. It has been further observed by the court that the trial court was justified in drawing a conclusion from the fact that the husband was unable in giving some cogent and reasonable explanation regarding his income and as to how was he managing to maintain himself and his parents.

The relevant paragraph is reads as under:

"The income of the petitioner was in his special knowledge. he is a qualified Engineer. It is difficult to believe that he would be idle and unemployed and was not earning at all. The petitioner was working as a Project Engineer. He alleged that he worked there only for about 11 months and received a lumpsum of Rs. 32,500/- But he is an (SIC) able bodied man and a qualified Engineer. Though he says (SIC) that he had no source of income at all but he has not (SIC) explained as to how he was maintaining himself and his (SIC) parents. His contention, therefore, does not at all evince (SIC) confidence. On the other hand, the respondent has alleged (SIC) that she does not have any independent source of income. (SIC) Apart from denying this allegation the petitioner has not disclosed any fact which may suggest that the respondent had (SIC) income for her maintenance and support. The respondent has (SIC) alleged in the reply that he had paid a sum of Rs. 1 lac to the petitioner when he was granted anticipatory bail in the criminal case registered on the complaint of the respondent wife. The source for payment of the amount has not been disclosed. The source of money by which he is maintaining the car has also not been revealed by him. The trial court on the facts and the circumstances seems perfectly justified in

assuming that petitioner had regular income as alleged by the respondent”.

11. I have heard counsel for the parties and also carefully perused the order dated 13.12.2010 passed by learned trial court. In this case, basic facts are not in dispute that marriage between parties was solemnized on 21.1.2008. Parties have been residing separately since August, 2009.
12. It is settled position of law that a wife is entitled to live in a similar status as was enjoyed by her in her matrimonial home. It is the duty of the courts to ensure that it should not be a case that one spouse lives in a life of comfort and luxury while the other spouse lives a life of deprivation, poverty. During the pendency of divorce proceedings the parties should be able to maintain themselves and should be sufficiently entitled to be represented in judicial proceedings. If in case the party is unable to do so on account of insufficient income, the other spouse shall be liable to pay the same. (See *Jasbir Kaur Sehgal (Smt.) v. District Judge, Dehradun & Others*, reported at (1997) 7 Supreme Court Cases 7).
13. A Single Judge of this Court in the case of *Bharat Hegde v. Saroj Hegde*, reported at 140 (2007) DLT 16 has culled out 11 factors, which can be taken into consideration for deciding the application under Section 24 of Hindu Marriage Act.
14. Further it has been noticed by the Courts that the tendency of the spouses in proceedings for maintenance is to not truthfully disclose

their true income. However, in such cases some guess work on the part of Court is permissible.

15. The Supreme Court of India in the case of *Jasbir Kaur (Smt.)* (supra), has also recognized the fact that spouses in the proceedings for maintenance do not truthfully disclose their true income and therefore some guess work on the part of the Court is permissible. Further the Supreme Court has also observed that “*considering the diverse claims made by the parties one inflating the income and the other suppressing an element of conjecture and guess work does enter for arriving at the income of the husband. It cannot be done by any mathematical precision*”.
16. Although there cannot be an exhaustive list of factors, which are to be considered in guessing the income of the spouses, but the order based on guess work cannot be arbitrary, whimsical or fanciful. While guessing the income of the spouse, when the sources of income are either not disclosed or not correctly disclosed, the Court can take into consideration amongst others the following factors:
- (i) Life style of the spouse;
 - (ii) The amount spent at the time of marriage and the manner in which marriage was performed;
 - (iii) Destination of honeymoon;
 - (iv) Ownership of motor vehicles;
 - (v) Household facilities;
 - (vi) Facility of driver, cook and other help;

- (vii) Credit cards;
- (viii) Bank account details;
- (ix) Club Membership;
- (x) Amount of Insurance Premium paid;
- (xi) Property or properties purchased;
- (xii) Rental income;
- (xiii) Amount of rent paid;
- (xiv) Amount spent on travel/ holiday;
- (xv) Locality of residence;
- (xvi) Number of mobile phones;
- (xvii) Qualification of spouse;
- (xviii) School(s) where the child or children are studying when parties were residing together;
- (xix) Amount spent on fees and other expenses incurred;
- (xx) Amount spend on extra-curricular activities of children when parties were residing together;
- (xxi) Capacity to repay loan.

17. These are some of the factors, which may be considered by any court in guesstimating or having a rough idea or to guess the income of a spouse. It has repeatedly been held by the Courts that one cannot ignore the fact that an Indian woman has been given an equal status under Articles 14 and 16 of the Constitution of India and she has a right to live in dignity and according to the status of

her husband. In this case, the stand taken by the respondent with respect to his earning is unbelievable.

18. In the instant case, admittedly the petitioner is a graduate and is pursuing MBA by distant learning since the year 2007. The petitioner has rendered a faint explanation that he could not complete the MBA on account of being mentally disturbed, due to the marital discord. Though the petitioner has made a vague averment that the respondent is capable of maintaining herself as she has done a course in interior decoration however no documents were placed on record in support of the same. Petitioner has placed on record of the trial court a certificate and a letter of appointment issued by M/s Kishan Lal Enterprises to show that he is earning Rs. 6500/-, per month. In my view the letter of appointment and the certificate is unreliable on account of circumstances and the manner in which the marriage was conducted between the parties. In view of the fact that it is not disputed that at the time of marriage the family of the respondent had presented Honda City Car to the petitioner, it is highly improbable that the family of the respondent would marry their daughter to a person, who is earning Rs.6500/-, per month. The trial court has analyzed the income of the petitioner, based on facts of the instant case and especially, in view of the fact that petitioner chose not to file any reply to the application filed by the respondent under Order 10 Rule 2 read with Rules 12 and 14 CPC. In fact, this could have been an opportunity

for the petitioner to truthfully bring his financial particulars on record unless he wanted to conceal his true income. Having chosen not to file any reply an adverse inference is bound to be drawn against the petitioner. Another factor, which is to be considered is that assuming that petitioner is looking after his two unmarried sisters and parents, Rs. 6500/- is not an amount in which he would be able to look after four members of his family and also maintain himself together with the fact that it is admitted that mother is running a shop. Further, based on the list of dealers that was downloaded from the internet and placed on record it *prima facie* shows that the petitioner is a dealer. Additionally, even if the stand of the petitioner is to be believed that the mother of the petitioner is carrying on her own business, it cannot be said that she is dependent on the petitioner. Further, in view of the fact that the mother of the petitioner is carrying out her own business, it is highly improbable that the unmarried sisters of the petitioner would be dependent on the petitioner who is stated to be earning a meager sum of Rs. 6,200/- per month. As far as earning from the shop, which is being run by the mother of the petitioner, is concerned, in the absence of any clear assessment with regard to the income, which the petitioner has himself chosen not to disclose, no benefit can be given to the petitioner on the basis of this submission. In my opinion, the trial court has rightly applied the law to the facts of this case. Thus, I find no infirmity in the order passed

by learned trial court, which requires interference under Article 226 of the Constitution of India. Accordingly, petition stands dismissed.

CM NO.2045/2011 (STAY)

19. In view of the orders passed in the petition, application stands dismissed.

April 01, 2011
'msr'

G.S. SISTANI, J.