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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CM(M) 711/2011

% *Judgment Delivered on: 03.06.2011*

SUKHVINDER SINGH Petitioner
Through : Mr. S.N. Kalra and Ms. Richa Srivastava,
Advs.
versus

BHUPINDER KAUR Respondent
Through

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)

+ CM NO.1154/2011 (EXEMPTION)

1. Allowed, subject to all just exception.
2. Application stands disposed of.

+ CM(M)NO.711/2009.

3. Present petition is directed against the order dated 15.3.2011 passed by learned trial court on an application filed by respondent (wife) under Section 24 of Hindu Marriage Act, by virtue of which, the petitioner was directed to pay maintenance @ Rs.10,000/-, per month, to the respondent (wife) and minor daughter.
4. Brief facts necessary to be noticed are that marriage between parties was solemnized on 13.4.2007 as per Hindu rites and rituals at New Delhi. One daughter, who is stated to be about two years of age, was born out of the wedlock. The petitioner husband has filed

a petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act.

5. Learned counsel for the petitioner submits that the order of the trial court is erroneous on the ground that there was no basis for the trial court to have arrived at the figure of Rs.10,750/-, per month, as maintenance, when the petitioner is only earning Rs.9,781/-. In support of his submission counsel for the petitioner has placed on record a certificate from his employer that his gross salary is ₹10,750/- per month, a copy of the Certificate issued on the letter head of the company whereby the Managing Director has certified that petitioner is a permanent employee of the company and is working as a dispatch in charge.
6. Learned counsel also submits that petitioner besides incurring day to day expenses on himself also has to maintain his old ailing mother and, thus, is unable to pay maintenance to the respondent. Ld. Counsel submits that the petitioner is willing to look after his wife and child provided the wife joins the petitioner in their matrimonial home.
7. As per the application filed by the respondent, petitioner (husband) is running his own investment business and is leading a lavish life; his total income from the said business is Rs.50,000/- per month; and he also owns a car bearing no.DL 8CP 7063 and owns three mobile phones. In response to this plea taken by the respondent before the trial court, counsel for the petitioner submits that the car

has been provided to the petitioner by his employer. Moreover, the car is used to transport goods and is not used personally by the petitioner.

8. I have heard counsel for the petitioner and have also perused the order dated 15.3.2011 passed by learned trial court. The trial court, while disposing of the application for maintenance, has taken into consideration that petitioner has not disclosed his true income with a view to wriggle out of his legal obligation to support and pay maintenance to his wife and the minor daughter and accordingly, fixed the maintenance @ ₹10,000/- per month for the respondent wife and the minor daughter.
9. Petitioner has assailed the order dated 15.3.2011 primarily on three grounds. Firstly, the trial court has failed to take into consideration the salary certificate filed by the petitioner, which shows the salary of the petitioner to be Rs.9,781/-; secondly, the trial court has failed to consider that petitioner has to look after his old ailing mother; and thirdly, petitioner is willing to look after his wife and child provided the wife joins her matrimonial home.
10. I have heard counsel for the petitioner and carefully perused the order of the trial court. While affixing the maintenance for the respondent and the minor daughter, the trial court has taken into consideration the following factors:

- (i) The petitioner works in a company, which is owned by his brother. Petitioner has the benefit of a car bearing No.DL 8CP 7036.
- (ii) The trial court has rejected the explanation of the petitioner that this car has been provided by the company for transportation of goods and not for his personal use, after perusing the registration certificate of the vehicle, which is a light motor vehicle, implying that it cannot be used for commercial purposes and also the admission made by the petitioner that the vehicle is used by him during the day as well as night.
- (iii) The trial court had also directed the petitioner to place on record his bank statement/ pass-book for the year 2007 onwards. On scrutiny of the pass-book, it was noticed that at an average petitioner was depositing approximately ₹33,000/- per month by way of cash and for which no explanation was rendered. Since the salary certificate was issued by the company which is owned by the brother of the petitioner, the trial court was of the opinion that manipulation in the salary certificate could not be ruled out, taking into consideration that the cash deposits made.
- (iv) The trial court has also relied upon settled position of law that the wife and child are entitled to enjoy the similar life-

style which the wife was enjoying in her matrimonial home.

11. Counsel for the petitioner has rendered an explanation with regard to cash amount deposited in his account that since the petitioner is working as dispatch incharge, the company used to give him the imprest amount and later on, he has to tender accounts. The explanation rendered by counsel for the petitioner is not convincing, in view of the fact that it is not expected that a person, who is given a salary of ₹10,750/- per month, would be provided with a car. Neither it is expected, nor convincing that real brother of the petitioner would be owner and director of a company, while the petitioner would be employed only at ₹10,750/- per month.
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. (See *Jasbir Kaur Sehgal (Smt.) v. District Judge, Dehradun & Others*, reported at (1997) 7 Supreme Court Cases 7).
13. 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.

14. 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*".
15. 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.
16. The respondent wife besides incurring day to day expenditure, providing for household expenses, also has to maintain and bring up the minor daughter and provide for all her needs.
17. In view of facts of the case and settled position of law, I find no infirmity in the impugned order passed by learned trial court. Accordingly, no grounds are made out to interfere in the proceedings filed under Article 227 of the Constitution of India. Petition stands dismissed.

18. At this stage, learned counsel for the petitioner prays that this matter may be referred to Delhi High Court Mediation Centre.

19. Accordingly, as prayed, list the matter before Delhi High Court Mediation Centre on 4.7.2011 at 4.30 p.m. Let a notice be issued to the respondent informing the respondent that the matter has been listed before Delhi High Court Mediation Centre on 4.7.2011 at 4.30 p.m.

CM NO.11553/2011 (STAY).

20. Application stands dismissed in view of the order passed in the petition.

G.S. SISTANI, J.

JUNE 03, 2011
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