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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CM(M) 898/2010

% *Judgment Delivered on: 31.03.2011*

PRAMOD KUMAR DIXIT Petitioner
Through: Mr. Utkarsh, Adv.

versus

SEEMA DIXIT @ SANNO Respondent
Through: Mr. Shivcharan Garg, Adv.

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)

CM No.12304/2010

1. The petitioner/husband has filed the present petition under Article 227 of the Constitution of India. The petitioner is aggrieved by the judgment of the trial court dated 24.04.2010 passed on an application filed by the respondent/wife under Section 24 of the Hindu Marriage Act, wherein the trial court has awarded ₹12,000/- per month as maintenance to the respondent (wife) and two minor children.
2. The necessary facts to be noticed for disposal of the present petition are that marriage between the parties was solemnized on

20.05.1997. Out of their wedlock, a son and a daughter presently aged about 13 years and 11 years were born. Owing to matrimonial discord, parties have been residing separately.

3. It is submitted by counsel for the petitioner that learned trial court has erred in awarding maintenance of ₹12,000/- for the respondent and two minor children. Counsel for the petitioner submits that the learned trial court has failed to take into consideration that the petitioner is working in a private company and earns ₹6,000/- per month only and he is not in a position to pay this amount to the respondent. Further, the counsel submits that the trial court has erroneously assessed the income of the petitioner to be ₹20,000/- to ₹25,000/-, per month. It is next submitted that the respondent is residing on the first floor of the premises which belong to the petitioner along with the children and the petitioner is paying the water and electricity charges for the premises. It is submitted that in view of the fact that the petitioner is earning a meager sum of ₹6,000/- the order is bad in law and is liable to be set aside.
4. It is submitted by counsel for the respondent that the petitioner has concealed his true income. It is next submitted that in an attempt to escape from paying maintenance to the respondent and two minor children, the petitioner did not place any documents before the trial court such as his salary slip, appointment letter from his present employers and other supporting documents on record. The counsel for the respondent further submits that the petitioner is

running a factory where he assembles radios and transistors and he is financially well off. The counsel submits that the petitioner has employed about 20 labours in the factory, to whom he is paying wages. Further, besides the factory, the petitioner is also receiving a rental income of ₹15,000/- from letting out the maruti van. It is next submitted that an estimate of the status of the petitioner may be drawn from the fact that the petitioner has subscribed to a MTNL Landline (22133265) and two mobile phones (9873322088) and (9711258642) for which he is paying a monthly bill of ₹2500/-. The counsel further submits that the petitioner owns two motorcycles and pays monthly electricity bill of ₹5,000/- for the factory in addition to the other day to day expenses for running the factory. It is next submitted that it is admitted by the petitioner that he is repaying a loan advanced from ICICI Bank for starting and running his factory for which he is paying a monthly installment of ₹4,191/- for repayment of the loan to the Bank. In view of the assets owned and admission of the petitioner of paying off the loan, counsel for the respondent submits that it cannot be believed that the petitioner is earning a meager sum of ₹6,000/-. This contention of the respondent is vehemently opposed by the counsel for the petitioner it is submitted that in order to repay the loan the petitioner is working overtime at his company.

5. The counsel for the respondent submits that the petitioner had concealed his PAN card, partnership deed of Dhoom Electronics,

details of ICICI Credit Card, Debit Card of SBI and bank statements, which would show his conduct. It is further submitted that it was only after the respondent placed copies of electricity and telephone bills, PAN card and other documents that the petitioner submitted that he wished to make certain clarifications with respect to his income

6. I have heard the counsel for the parties and also carefully perused documents placed on record and the order dated 24.04.2010 passed by learned trial court. While deciding the application filed by the respondent, the trial court has taken into consideration possession of mobile phones and one land line telephone, electricity bills and mobile bill charges of the petitioner the fact that petitioner has obtained financial assistance from ICICI Bank, the fact that he is repaying the loan and paying installment of ₹4191/- per month and also the fact that he has concealed his true income. Further the trial court has also considered that the petitioner has neither placed any appointment letter nor salary certificate from his employer on record.
7. 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. 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."

8. A Single Judge of this Court in the case of ***Bharat Hegde v. Saroj Hegde***, reported at 140 (2007) DLT 16 had culled out 11 factors, which can be taken into consideration for deciding the application under Section 24 of Hindu Marriage Act, relevant portion of which reads as under:

8. Unfortunately, in India, parties do not truthfully reveal their income. For self employed persons or persons employed in the unorganized sector, truthful income never surfaces. Tax avoidance is the norm. Tax compliance is the exception in this country. Therefore, in determining the interim maintenance, there cannot be mathematical exactitude. The court has to take a general view. From the various judicial precedents, the under noted 11 factors can be culled out, which are to be taken into consideration while deciding an application under Section 24 of the Hindu Marriage Act. The same are:

- (1) Status of the parties.
- (2) Reasonable wants of the claimant.
- (3) The independent income and property of the claimant.
- (4) The number of persons, the non applicant has to maintain.
- (5) The amount should aid the applicant to live in a similar life style as he/she enjoyed in the matrimonial home.
- (6) Non-applicant's liabilities, if any.

- (7) Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.
- (8) Payment capacity of the non-applicant.
- (9) Some guess work is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.
- (10) The non-applicant to defray the cost of litigation.
- (11) The amount awarded under Section 125, Cr.P.C. is adjustable against the amount awarded under Section 24 of the Act.

9. Further it has been noticed time and again 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.

10. 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*".

11. Although there cannot be an exhaustive list of factors, which are to be considered by the court 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 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.

12. These are some of the factors, which may be considered by any court in guesstimating or gaining 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.
13. Applying the settled law and the factors detailed above to the facts of this case, admittedly, the appellant is repaying a loan, obtained for the purpose of starting of his own factory, from ICICI Bank and is paying a monthly installment of ₹4191/-, per month, towards repayment of same. It is highly improbable that the appellant would be granted a loan from ICICI bank in case petitioner was earning a mere sum of ₹6000/-, per month. It is even more improbable that a person earning ₹6000/-, per month, would be in a position to maintain two mobile phones, one land line and would open various bank accounts and holds several credit and debit cards. It is apparent from the conduct of the appellant and also from perusal of the impugned order that the appellant has not disclosed his true income. In view of the submissions made by the

respondent and documents placed on record in support of her claim that the appellant is a man of means, I find the stand of the appellant that he is earning a meager sum of ₹6000/-, per month, to be highly improbable and unbelievable. The petitioner has also not disclosed the name of the factory, details of his employees or even the address where he is working at present. Accordingly, his plea that he is earning a meager sum of ₹6,000/-, per month, invokes no confidence. It cannot be expected that the respondent who has no source of income can maintain her two school going children for whom she has to pay tuition fee, transportation charges, books and uniform, etc., besides incurring expenditure for running the household. 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. Accordingly, taking into consideration the facts of the case and the settled position of law, I find the trial court has correctly applied the law to the facts of the present case. There is no infirmity in the order, the petition is accordingly dismissed.

G.S. SISTANI, J.

March 31, 2011
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