

34.

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CM(M) 1029/2009

% *Judgment Delivered on: 03.02.2011*

RAJESH KUMAR SHAHI Petitioner

Through : Petitioner in person.

versus

RIMA SHAHI Respondent

Through : Ms. Manisha Bhandari and Mr. Omkar
Shrivastava, Advs. along with the
respondent.

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 1.9.2009 passed by learned Additional District Judge on an application filed by respondent seeking enhancement of maintenance awarded to her by an order dated 14.1.2004. Initially the trial court had awarded maintenance @ ₹15000/-, per month, to the respondent herein on 14.1.2004. Subsequently, on an application filed by the respondent, on 1.9.2009 the amount of maintenance i.e. ₹15,000/-, per month, was increased to ₹30,000/-, per month, to be paid by the petitioner herein to the respondent w.e.f. 20.5.2008.

2. Necessary facts to be noticed for the disposal for the present application are that marriage between parties was solemnized on 15.02.1994. However, owing to matrimonial discord the parties are residing separately since February 2000.
3. Petitioner, who appears in person, submits that order of the Trial court granting maintenance @ of ₹30,000 per month is bad in law and is liable to be set aside. The petitioner submits that the learned trial court has failed to take into consideration the income tax return filed by him before the trial court, which shows that his salary as ₹18,000/-, per month, and in addition thereto the petitioner receives a rental income of ₹1.20 lakhs, per annum. Accordingly, the petitioner submits that the petitioners total annual income amounts to ₹3,38,684/-. Petitioner further submits that it is not possible for a person who earns approximately ₹28,000/-, per month to pay maintenance @ ₹30,000/-, per month to the respondent.
4. Petitioner submits that learned trial court erred in treating the income of the company where the petitioner is a director and is only drawing a remuneration as income of the petitioner. It is further submitted that the trial court has failed to take into consideration the settled proposition of law that a company is a distinct legal entity from an individual and the assets of the company cannot be included or treated as the personal assets of the petitioner.
5. The petitioner has placed reliance on **Bacha F. Guzdar v. CIT**, reported at **(1955) 1 SCR 876**, in support of his contention that the

company is a juristic person and has an existence independent from that of the shareholders. The relevant para is reproduced below:

“...It is true that the shareholders of the company have the, sole determining voice in administering the affairs of the company and are entitled, as provided by the Articles of Association to declare that dividends should be distributed out of the profits of the company to the shareholders but the interest of the shareholder either individually or collectively does not amount to more than a right to participate in the profits of the company. The company is a juristic person and is distinct from the shareholders. It is the company which owns the property and not the shareholders. The dividend is a share of the profits declared by the company as liable to be distributed among the shareholders. Reliance is placed on behalf of the appellant on a passage in Buckley’s Companies Act (12th Edn.), p. 894 where the etymological meaning of dividend is given as dividendum, the total divisible sum but in its ordinary sense it means the sum paid and received as the quotient forming the share of the divisible sum payable to the recipient. This statement does not justify the contention that shareholders are owners of a divisible sum or that they are owners of the property of the company. The proper approach to the solution of the Question 1s to concentrate on the plain words of the definition of agricultural income which connects in no uncertain language revenue with the land from which it directly springs and a stray observation in a case which has no bearing upon the present question does not advance the solution of the question. There is nothing in the Indian law to warrant the assumption that a shareholder who buys shares buys any interest in the property of the company which is a juristic person entirely distinct from the shareholders. The true position of a shareholder is that on buying shares an investor becomes entitled to participate in the profits of the company in which he holds the shares if and when the company declares, subject to the Articles of Association, that the profits or any portion thereof should be distributed by way of dividends among the shareholders. He has undoubtedly a further right to participate in the assets of the company which would be left over after winding up but not in the assets as a whole as Lord Anderson puts it”.

6. The petitioner has also placed reliance on the case of **Tata Engineering and Locomotive Co. Ltd. v. State of Bihar** reported at **(1964) 6 SCR 885** wherein the Apex court held as below:

"The true legal position in regard to the character of a corporation or a company which owes its incorporation to a statutory authority, is not in doubt or dispute. The Corporation in law is equal to a natural person and has a legal entity of its own. The entity of the Corporation is entirely separate from that of its shareholders; it bears its own name and has a seal of its own; its assets are separate and distinct from those of its members; it can sue and be sued exclusively for its own purpose; its creditors cannot obtain satisfaction from the assets of its members; the liability of the members or shareholders is limited to the capital invested by them; similarly, the creditors of the members have no right to the assets of the Corporation. This position has been well established ever since the decision in the case of Salomon v. Salomon and Co. 12 was pronounced in 1897; and indeed, it has always been the well-recognised principle of common law. However, in the course of time, the doctrine that the Corporation or a Company has a legal and separate entity of its own has been subjected to certain exceptions by the application of the fiction that the veil of the Corporation can be lifted and its face examined in substance. The doctrine of the lifting of the veil thus marks a change in the attitude that law had originally adopted towards the concept of the separate entity or personality of the Corporation. As a result of the impact of the complexity of economic factors, judicial decisions have sometimes recognised exceptions to the rule about the juristic personality of the corporation. It may be that in course of time these exceptions may grow in number and to meet the requirements of different economic problems, the theory about the personality of the corporation may be confined more and more".

7. Relying on the above decisions the petitioner submits that the order of the Id. Trial court is bad in law as the trial court has completely ignored the Income Tax Record's placed on record and has enhanced the quantum of maintenance granted to the respondent. It is contended by the petitioner that learned trial court has failed to take into consideration that Glory Ship Management Private Limited has taken a loan from Bank of Baroda in the sum of ₹90.00 lakhs. It is next submitted by the petitioner that according to the

mortgage/hypothecation deed entered into between the company and the bank for the purposes of securing the loan advanced by the bank, the accrued profit and profit that shall accrue in future of the company stands hypothecated to the bank. It is further submitted that the company is not entitled to disburse profit and accordingly, the company has not declared dividend. It is further submitted that the Ld. Trial court has without any basis held that a monthly installment of ₹1.00 lakh, per month, is to be paid to the Bank of Baroda for repayment of the loan. Although it is not disputed that a loan of ₹90.00 lakh was obtained from the bank.

8. Petitioner further submits that respondent is trying to mislead the court by placing on record voluminous documents purporting to show that the petitioner is the owner/director of many companies. Petitioner contends that contrary to allegations of the respondent the petitioner holds only 55% shares in the company, known as, Glory Ship Management Private Limited. The petitioner further submits that the other company by the name of Wordlink Ship Management Services, which has been added in the list of companies owned by the petitioner, is a defunct company which was purchased by Glory Ship Management Private Limited of which the petitioner is a share holder for a sum of ₹3.50 lakhs (approximately) in the year 2004. Petitioner next submits that the company is not his private company. Petitioner further submits that the documents filed with respect to Shahi Gasol Limited would show

that he owns only 5 shares out of 2,17,163 shares and that the petitioner has no financial stake in the company nor he is deriving any benefit from the company. Accordingly, the petitioner submits that the documents submitted with respect to various companies are merely to mislead the court and only to engage the petitioner in time consuming litigation.

9. It is submitted by the petitioner that photographs of the Mercedes Car, which have been filed on record, parked inside petitioner's house are incorrect and misleading as the Registration Certificate of the car would show that the car stands in the name of M/s Shahi Ship Limited, which is an independent public limited company, run by the petitioner's father. The petitioner submits that he uses a TATA Indica car and the car has been given by the Glory Ship Management.
10. Learned counsel for the respondent has opposed this petition; firstly, on the ground that petitioner has been unable to show that the order of the learned trial court is perverse or illegal or that the learned trial court has exceeded its jurisdiction. It is submitted by the counsel for the respondent that the trial court has weighed all the documents placed on record and has duly passed the order granting maintenance to the respondent wife. Counsel for the respondent submits that petitioner has suppressed and withheld material facts before the trial court which led to the passing of the order dated 14.1.2004 and after the respondent was able to lay her

hands on various documents she filed the second petition for enhancement of maintenance. Counsel for the respondent further submits that even at the time of filing the application for maintenance, the petitioner has suppressed and withheld material documents and the explanation, sought to be rendered today, should have been made by the petitioner in reply to the application filed under Section 24 of Hindu Marriage Act or in reply to the petition filed by the respondent for enhancement and even before this Court, while filing the present petition. Counsel for the respondent submits that the petitioner has concealed material facts and is manipulating the documents only with a view to deprive the respondent of her legitimate maintenance. Ms. Bhandari submits that petitioner is a CEO/promoter of various companies including Glory Ship Management. It is next submitted that the company deals in ship management, ship charter and import and export of ship spare parts and man power supply. The counsel for the respondent next submits that company of the petitioner is registered with Registrar of companies and has a net worth of more than ₹1 crore. Counsel for the respondent submits that a perusal of the various documents placed on record would show that the petitioner is director/having vast stakes in various companies. Counsel next submits that petitioner has been manipulating the affairs of various companies in which he has shareholdings, only with a view to avoid payment of maintenance to the respondent. Further it is submitted

that the order of the Ld. trial court is correct and there is no irregularity with the same. Accordingly, it is submitted that the present petition is liable to be rejected.

11. It is submitted by learned counsel for the respondent that in addition to the petitioner's investment in various companies, the petitioner has illegally taken over a building which was constructed by the father of the respondent for the benefit of the respondent and her sisters, bearing address Plot No. 346.Kopherkharaine, navi Mumbai. The counsel submits that the petitioner has usurped the property of the respondent and is enjoying rental income from the same. It is also submitted that the said building is constructed on a 300 sq. mts. plot and initially it had flats and at present it has been converted into a chaul, which has 40 to 50 rooms. It is further submitted that every portion of this building has been given on rent including facilities for cots in the corridors in order to cash on the acute shortage of accommodation in Mumbai. It is also submitted that since most of the rent is received in cash the amount shown as received in the income tax return is sham and a mere eye-wash. This fact is disputed by the petitioner. Photographs of the building have been placed on record by the respondent in support of her claim.

12. Learned counsel for the respondent has drawn the attention of the Court to a fresh certificate of incorporation issued consequent upon change of name of Shahi Ship Limited to SKS (Ship) Limited, of which, at one time, the petitioner was a Director. This fact is

disputed by the petitioner, who submits that although he was initially a Director of this company, but he was forced to resign due to behavior of the respondent and was forced to shift to Singapore along with the respondent in the year 1997.

13. Learned counsel for the respondent submits that Glory Ship Management Private Limited is financially sound and has been doing good business. A copy of the company's Form 23(A)(C) has been placed on record. Counsel for the respondent submits that reserve and surplus of the company has increased from ₹4,90,552/- in the year 2008 to ₹5,747,533/-; in the year 2009 and secured loans have decreased from ₹8,876,003/- to ₹7,606,721/-; and in the year 2009 the company had fixed deposits of over ₹30.00 lakhs. In response to this contention of the respondent the Petitioner submits that he has a certificate of the Bank dated 3.2.2011 to show that there are no fixed deposits of the company as on date.

14. Learned counsel for the respondent submits that current assets of the company have increased from (-) ₹1,810,017/- to ₹1,482,932/-. Counsel for the respondent has relied upon the balance sheet of Glory Ship Management Private Limited Company as on 31.3.2009 to show that secured loan has also decreased and sales and other income has increased from ₹20,098,189/- to ₹27,811,604/-. Counsel for the respondent next submits that documents at page 40 of the paper book is a copy of the Scheduled Annexure of the Balance Sheet of the company, which would show that petitioner had secured

a loan in the year 2009 for purchase of Wordlink Ship Management Company. Counsel for the respondent also submits manipulation of the petitioner is evident reading of the annexures to the balance sheet which would show that Director's remuneration has been shown as ₹344,864/-. It is submitted that the petitioner is the Managing Director of the company and other Directors are only Directors on papers and it is the petitioner who is drawing the entire amount shown as remuneration paid to directors. Counsel next submits that this annexure would also show that professional fee has been paid to the tune of ₹2,005,380/- and salary and other benefits are shown as ₹1,086,987/-, which amounts are also only sham entries. Counsel also submits that although there are only 15 employees, the telephone and mobile charges shown are to be more than ₹258,792/- and a sum of ₹672,346/- has been shown as rent towards conveyance and travel in addition to ₹331,223/- as vehicle expenses and ₹305,611/- as business promotion expenses, besides, a sum of ₹149,682/- as miscellaneous expenses. Ms. Bhandari contends that in fact all these entries are fictitious and are to be added to the income of the petitioner.

15. It is submitted by learned counsel for the respondent that a sum of ₹875,473/- has been shown towards repair and maintenance all of which would show that these are indirect benefits accrued in favour of the petitioner, who is the Managing Director of the Company. It is further submitted that with a view to avoid making payment of

maintenance the petitioner has manipulated the shareholding of Shah Ship Limited, which is admittedly being run by petitioner's brother. It is next submitted that the status of the petitioner is evident from the fact that he is the owner of Mercedes car which is evident from the photograph showing that the car is parked in the house of the petitioner.

16. It is submitted by the petitioner that Shah Ship Limited is now known as SKS (SHIP) Limited, of which Shahi Gasol is a promoter to the tune of 24.2% equity shares of which the petitioner has only five shares, however, learned counsel for the respondent while relying on Form 32 submits that at one time the petitioner was a Director along with his brother of Shahi Gasol limited.

17. I have heard the petitioner, who appears in person, and counsel for the respondent. The learned trial court while passing the impugned order dated 1.9.2009 has increased the maintenance from ₹15,000/-, per month to ₹30,000/-, per month, taking into consideration the income and the interest of the petitioner in Glory Ship Management Private Limited. The trial court enhanced the maintenance on the basis of documents, pertaining to Glory Ship Management Pvt. Ltd which were placed on record of trial court with the application for enhancement. The trial court in its order has made detailed observations with regards to the income that the petitioner drawn from Glory Ship Management Pvt Limited. The learned trial court in its order has also taken into account that the petitioner is a

mechanical engineer and who was earning ₹75,000/- at one point of time. Trial court has further gone on the premise that a person who was earning a sum of ₹75,000 per month cannot be expected to earn less than ₹50,000/- p.m. Accordingly, the trial court has considered and duly weighed and considered all documents placed on record.

18. 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

19. 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."

20.A Single Judge of this Court in the case of ***Bharat Hegde v. Saroj Hegde***, reported at 140 (2007) DLT 16 had culled out following 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.

21. 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.

22. 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*”.

23. Although, in this Court’s opinion there cannot be an extensive list or 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 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) Credit cards;
- (vi) Capacity to repay loan.
- (vii) Club Membership;
- (viii) Amount of Insurance Premium paid;
- (ix) Property or properties purchased;
- (x) Rental income;
- (xi) Amount spent on travel/ holiday;
- (xii) Number of mobile phones;
- (xiii) Locality of residence;
- (xiv) Amount of rent being paid;
- (xv) Qualification of spouse;
- (xvi) School(s) where the child or children are studying when parties were residing together;
- (xvii) Amount spend on fees and other expenses incurred;
- (xviii) Amount spend on extra-curricular activities of children when parties were residing together;
- (xix) Facility of driver, cooks and other help; and
- (xx) Household facilities.

24. 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.

25. In the instant case, the stand taken by the respondent with respect to his earning is unbelievable. Further, from a perusal of the balance sheets, statement of account, certificates of incorporation and various documents of Glory Ship Management Private Limited and other companies of which the petitioner is a Director/stakeholder, which have now been placed on record of this court of which, it appears that the petitioner has not come to the court with clean hands and is suppressing his true income. A perusal of the statement of account and balance sheets would show that in addition to the salary, which is being received by the petitioner, he is also taking benefit of various perks in the form of vehicle expenses, conveyance and travelling, telephone and mobile charges. A perusal of the certificate from the Chartered Accountant shows that petitioner is a major shareholder in Glory Ship Management Pvt Limited. Further, *prima facie* I find force in the submission of the counsel for the respondent that the entries under the heads of director's remuneration, professional charges, telephone and mobile charges appear to be inflated and excessive especially in view of the fact that the company has only 15 people employed. The petitioner has also not been able to refute the contention of the respondent that the second director i.e Viveka Nanada Mishra is only a dummy director. Further, in all important documents of Glory Ship Management Private Limited the official email address of the petitioner i.e rajeshshahi@gloryship.org has been mentioned. It

emerges from a perusal of the documents that the petitioner is a director in Shahi Gasol Limited, World Link Shipping Corporation. The petitioner has also not been able to render any reasonable explanation about the parking of the Mercedes in his house. Though the petitioner admits that the petitioner has been provided an Indica car by the company with a driver.

26. In the present matter, it appears to be highly improbable that a mechanical engineer who was earning a sum of ₹75,000 per month while he was working in Singapore would agree to start his own business and earn Rs. 18,000 or even lesser per month. Further, it has been rightly observed by the trial court that a perusal of the income tax record of the petitioner shows that the petitioner is also receiving income from other sources. The plea of the petitioner that he is merely a director in Glory ship management and is drawing a remuneration of ₹18,000/- per month does not evoke any confidence. Additionally, in view of the documents placed on record before this court, it appears that the petitioner has stake in various companies and has concealed his true income in order to deny the respondent wife of the legitimate maintenance. It appears from the documents placed on record that the petitioner is well off and is a man of means. Accordingly, I find that the order of the trial court for payment of maintenance @ ₹30,000/-, per month, to the respondent wife is just and reasonable in law as all relevant factors/documents have been duly been taken into consideration. The order awarding

maintenance is in accordance with the status of the parties. Applying the settled position of law to the facts of the instant case, I find no grounds to interfere and the petition is accordingly dismissed.

CM NO.13609/2009 (STAY).

10) Interim order stands vacated.

11) Application stands disposed of in view of the order passed in the petition.

G.S. SISTANI, J.

February 03, 2011
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