

04.

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CM(M) 1503/2007

% *Judgment Delivered on: 07.02.2011*

PREETI Petitioner
Through : Ms. Sonia Arora, Adv. along with the
petitioner.

versus

RAVINDER Respondent
Through : Mohd. Kausar Perwel, Proxy Adv. 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? **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 dated 3.10.2007 passed by learned Additional District Judge, Delhi, on an application filed by the petitioner (wife), seeking enhancement of maintenance for herself and her minor son, who was two years of age at the time of passing the order.
2. Learned counsel for the petitioner wife submits that learned trial court had initially awarded a sum of ₹4500/-, per month, as maintenance, to the petitioner and her minor son on an application filed by the petitioner under sections 24 & 26 of the Hindu Marriage Act. The amount was later enhanced to ₹7000/-, per month, which amount is also stated to be insufficient. Counsel further submits

that learned trial court has failed to take into consideration the status of the parties; the fact that petitioner is a housewife; has a minor school going son; she has no source of livelihood; and she is only dependent on the respondent (husband) for maintenance and support. Counsel also submits that the amount awarded by the trial court is extremely unreasonable in view of the fact that petitioner has to pay for the school fee, bus fee, uniform, transport and for extra-curricular activities besides other day-to-day expenses of the minor five years old son. Counsel next submits that trial court has completely lost track of the fact that petitioner is entitled to enjoy the same standard of living as she was enjoying in her matrimonial home.

3. Leaned counsel for the petitioner submits that the respondent is a man of means and he is owner of immovable properties. Further it is submitted that the respondent has concealed his income. In support of this plea, counsel for the petitioner has drawn the attention of the Court to an affidavit filed by the petitioner at page 61 of the paper book, along with which copy of an affidavit which was to be furnished along with the nomination papers, which was filed by respondent before the Returning Officer at the time of contesting election to Delhi Legislative Assembly, 2008. It is submitted by the counsel for the petitioner that the respondent had himself deposed in the affidavit and the annexures thereto that respondent has a cash balance of ₹1.00 lakhs in his saving bank account no.3783 in Bank of Maharashtra, Bapdola Branch, Delhi. Further, the counsel submits

4. that besides the savings of ₹1.00 lakh, the petitioner has admitted that he pays LIC premium of ₹76,728/-, annually; owns three motor cycles; and is also the owner of a land measuring 1800 sq. yds. situated at Rohtak. Further, it is submitted by the counsel for the petitioner that a perusal of the affidavit would also show that the respondent had taken a loan in the sum of ₹14.00 lakhs from ICICI Bank and ₹2.00 lakhs from Bank of Maharashtra. Counsel submits that the stand taken by the respondent that he earns only ₹4000/-, per month, cannot be believed as it cannot be expected that any bank would grant loan to the tune of ₹14.00 lakhs and ₹2.00 lakhs, respectively to a person, who earns only ₹4000/-, per month.
5. Counsel for the petitioner next submits that this affidavit also shows that respondent is the owner of non-agricultural land, measuring 1800 sq. yards, situated at Village Ghillour Kalan, Tehsil and District Rohtak, Haryana, on which, admittedly, a petrol pump is being run, of which, the petitioner is the owner and has substantial share in it.
6. Learned counsel for the respondent has opposed the present petition for enhancement on the ground that respondent (husband) is not the owner of petrol pump, known as M/s Kissan Filling Station, which belongs to one Mr. Chaju Lal; and the petitioner is working as a Manager in this petrol pump and is being paid only ₹4000/-, per month. Counsel for the respondent further submits that there is no written agreement between Mr. Chaju Lal and the respondent, except that he is paid ₹4000/-, per month. Counsel also

submits that there is no need for enhancement as the petitioner has concealed the fact that she is working as a Teacher in a computer institute and she is able to maintain herself and the child. Counsel for the petitioner disputes the same and submits that petitioner is only pursuing computer course from the said institute.

7. I have heard counsel for the parties and also perused the documents placed on record. The basic facts are not in dispute that marriage between parties was solemnized on 11.2.2005. A male child was born out of their wedlock on 9.11.2005. Parties started residing separately from 23.3.2006 onwards.
8. 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.
9. 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. *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."

10. 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.

11. 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.

12. 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*".

13. 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 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.

14. 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.
15. I have perused the affidavits filed by the respondent before the Returning Officer, copies of which have been placed on record by the petitioner. As per the affidavits filed by the respondent before the Returning Officer he has disclosed the following assets:

A DETAILS OF MOVABLE ASSETS

Sl. No.	Description	Self	Spouse(s)	Dependent-1 Name	Dependent-2 Name	Dependent-1 Name
(i)	Cash	Rs.1,00,000	Smt. Preeti (Living separately)	Akshit (living with his mother)	N.A.	N.A.
(ii)	Deposits in Banks, Financial Institutions and Non-Banking Financial Companies.	With SB A/c No.3783, Bank of Maharashtra, Bapdola Branch, Delhi having balance Rs.1. lac	N.A.	N.A.	N.A.	N.A.
(iii)	Bonds, Debantures and Shares in companies.	N.A.	N.A.	N.A.	N.A.	N.A.
(iv)	Other financial instruments, NSS, Postal Savings, LIC Policies, etc.	LIC Policy No.331782026 of LIC Branch District Centre, Janak Puri, New Delhi and the premium of the same is being paid at Rs.76,728/- p.a.	N.A.	N.A.	N.A.	N.A.
(v)	Motor Vehicles (details of	1. Hero Honda Passion, Regn.	N.A.	N.A.	N.A.	N.A.

	make, etc.)	No.DL 3S AJ 1969 Model, 2001. 2. Royal Enfield.				
(vi)	Jewellery (give details of weight and value)	Gold ornaments worth Rs.45,000/- weighing 45 gms. Appx.	N.A.	N.A.	N.A.	N.A.
(vii)	Other Assets	No.	No.	No.	No.	No.

Sl. No.	Description	Self	Spouse(s)	Dependent- 1 Name	Dependent- 2 Name	Dependent- 1 Name
(i)						
(ii)	Non- Agricultural Land - Location(s) - Survey -Number(s) -Extent (Total Measurement) Current Market Value	A plot area measuring 1800 sq. yds. at Villae Ghilord, Distt. Rohtak, Haryana Having worth Rs.10,00,000/- Approx.	N.A.	N.A.	N.A.	N.A.

16. The details of the assets of the respondent as disclosed by him, would show that he is a man of means. He possesses both movable and immovable property. He has also availed of loan facility from two banks in the total sum of ₹16.0 lacs. As per the stand of the respondent he has given on lease his land to Mr.Chaju Lal to run a petrol pump. It is most improbable that respondent would give his land on lease and permit Mr. Chaju Lal to run a petrol pump and in return he would only be paid ₹4000/-, per month. The respondent has failed to place any document on record to clear the air and to show the arrangement between him and Mr. Chaju Lal. To my mind, this amounts to willful concealment of relevant material and the Court must draw an adverse inference against the respondent. I also find it unbelievable that salary of respondent is only ₹4000/-, per month, which is below the minimum wages. It is impossible for

any nationalized Bank to grant loan to a person to the tune of ₹14.00 lakhs and ₹2.00 lakhs, respectively, without a person giving material to the bank to show his ability to repay the loan.

17. In this case, grant of loan to the respondent to the tune of ₹14.00 lakhs and ₹2.00 lakhs, respectively; respondent owning motorcycle; immovable property in the name of respondent; and, admitting that Chajju Lal is running a petrol pump on the land of the respondent - are important factors to be considered for guessing the income of the respondent. Besides, as already observed, it is neither realistic nor probable that the respondent would allow Mr. Chaju Lal to run a petrol pump on his land and the respondent would work as a Manager for a meagre salary of ₹4000/- in the absence of a written agreement. Further, the respondent has failed to satisfy this court that petitioner has any independent source of income to maintain herself and the minor child. The petitioner is bringing up her five year old minor school going son and her demand for sufficient maintenance is fair and just in view of the fact that petitioner has to spend on the school fee, transport, uniform, extra-curricular activities of the minor child and other day-to-day expenses. While this court is conscious of the observations made by the Apex Court in the case of *Jasbir Kaur (Smt.)* (supra) that "*the amount of maintenance fixed for the wife should be such as that she can live in reasonable comfort, considering the status and 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 the case. At the*

same time, the amount so fixed cannot be excessive or exorbitant”,

I am satisfied that the needs of the wife and the minor child are genuine and the maintenance fixed in this case is extremely unreasonable. Consequently, the order of the trial court is modified. The amount of maintenance is enhanced from ₹7000/-, per month, to ₹15,000/-, per month, to be paid by respondent (husband) to the petitioner and her minor son.

18. Petition stands allowed, in above terms.

G.S. SISTANI, J.

February 07, 2011
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