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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CM(M) 1469/2010

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Date of decision: 15th September, 2011

JASVINDER KAUR Petitioner
Through : Mr. Kannan Kapur, Adv.

versus

RAJ JOG SINGH Respondent
Through : None.

**CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA**

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| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | NO |
| 2. | To be referred to the Reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

JUDGMENT (ORAL)

1. The petitioner has challenged the impugned order dated 6th July, 2010 whereby the learned Trial Court has awarded maintenance of ₹6,000/- to the petitioner for herself and ₹4,000/- towards the minor child.
2. There is no appearance on behalf of the respondent despite the matter having been passed over thrice.
3. The learned counsel for the petitioner submits that the respondent is working as a consultant with IBM India Pvt. Ltd.,

drawing a net salary of ₹66,000/- per month whereas the learned Trial Court has taken the net salary of the respondent to be ₹57,000/- per month. It is further submitted that the petitioner is working as a teacher with Guru Harkishan Public School, drawing a monthly salary of ₹14,000/- which has been taken into consideration by the learned Trial Court but the learned Trial Court has not taken into consideration that the petitioner is staying in a rented accommodation with rent of ₹6,000/- per month and has taken a loan of ₹1,70,000/- on which she has to pay monthly installment of ₹5,780/- per month. It is submitted that after deducting the monthly rent of ₹6,000/- and the monthly loan installment of ₹5,780/- per month, the petitioner is left with ₹2,220/- which is not sufficient for her to sustain herself. It is submitted that the petitioner is entitled to equal status as that of the respondent.

4. The learned counsel for the petitioner refers to and relies upon the judgment of this Court in the case of **Annurita Vohra v. Sandeep Vohra, 110 (2004) DLT 546** in which this Court awarded maintenance of ₹15,000/- taking the husband income to be ₹32,000/- per month. The findings of this Court are reproduced hereunder:-

“2. In other words the court must first arrive at the net disposable income of the Husband or the dominant earning spouse. If the other

spouse is also working these earnings must be kept in mind. This would constitute the Family Resource Cake which would then be cut up and distributed amongst the members of the family. The apportionment of the cake must be in consonance with the financial requirements of the family members, which is exactly what happens when the spouses are one homogeneous unit. Ms. Geeta Luthra, learned counsel for the respondent had fervently contended that normally 1/5th of the disposable income is allowed to the Wife. She has not shown any authority or precedent for this proposition and the only source or foundation for it may be traceable to Section 36 of the Indian Divorce Act, 1869. This archaic statute mercifully does not apply to the parties before the Court, and is a vestige of a bygone era where the wife/woman was considered inferior to the husband as somewhat akin to his chattels. The law has advanced appreciably, and for the better. In the face of Legislatures reluctant to bring about any change over fifty years ago the Courts held that the deserted wife was entitled to an equal division of matrimonial assets. I would be extremely loath to restrict maintenance to 1/5th of the Husband's income where this would be insufficient for the Wife to live in a manner commensurate with her Husband's status or similar to the lifestyle enjoyed by her before the marital severance. In my view, a satisfactory approach would be to divide the Family Resource Cake in two portions to the Husband since he has to incur extra expenses in the course of making his earning, and one share each to other members.

3. Observations in similar vein have been made by a Learned Single Judge of this Court in *Harinder Kaur vs. Sukhwinder Singh* 2002 6 AD (DELHI) 797. S.N. Kapoor, J.

had opined that one should not be oblivious of the fact that equal status has been given to the Indian women under Articles 14 and 16 of the Constitution and that she should live according to the status of her husband along with the child of the parties. The Learned Judge had ordered that the income has to be equitably apportioned for maintenance of wife and the child. In his opinion the income should have been divided into five units, two units for each of the parents and one for the young child. On a disposable income of Rs.12,000/- he had granted Rs.7,200/- per month for the maintenance of the wife and the child.

4. Whichever method one may adopt, on a disposable income of Rs.32,000/- per month, the wife and child would ordinarily be entitled to approximately Rs.18,000/-. It has been vehemently argued that since the Petitioner/Wife has set up her residence, on her own volition, with her affluent parents, she does not require to pay rentals etc. but this factor has been rejected by the Court."

5. The learned counsel for the petitioner also refers to and relies upon the judgment of this Court in the case of **Vinay Kumar v. Savita, MANU/DE/8933/2006** in which this Court awarded maintenance of ₹12,000/- per month taking the husband income to be ₹25,000/-.

6. With respect to the income of the husband, the pay slip of IBM India Private Limited for the month of January, 2010 has been placed on record by the petitioner according to which the gross earnings of the respondent are ₹77,050.98 out of which ₹19,734/- is deducted towards the provident fund, VPF

contribution and Income Tax. The net income of the respondent is ₹57,316.98.

7. With respect to the petitioner's income, the learned Trial Court has noted in para 5 of the impugned order that the petitioner has taken alternative accommodation at a rent of ₹6,000/- per month for herself and for her minor child and she has to pay monthly installment of ₹5,780/- per month on the loan of ₹1,70,000/- taken by her. As a result, after adjusting the rent of ₹6,000/- per month and the loan installment of ₹5,780/- per month, the petitioner is left with net amount of ₹2,220/- per month. The learned Trial Court has recorded the submissions in para 5 of the impugned order but has not taken the same into consideration while fixing the interim maintenance.

8. Taking the aforesaid income of the parties into consideration, this Court is of the view that the petitioner is entitled to maintenance of ₹20,000/- per month for herself and ₹5,000/- for the minor child. The litigation expenses of ₹10,000/- awarded by the learned Trial Court are fair and reasonable and do not warrant any interference.

9. The petition is allowed and the impugned order is modified to the extent that the petitioner would be entitled to maintenance of ₹20,000/- per month for herself and ₹5,000/-

per month for the minor child from the date of filing of the application, i.e., 18th January, 2010. The respondent is directed to pay the enhanced maintenance amount to the petitioner within 30 days.

SEPTEMBER 15, 2011
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J.R. MIDHA, J