

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 21/2011 & CM No.361/2011

Judgment delivered on : 19th December, 2011

KAPIL JUNEJA

..... Petitioner
Through: Mr. Jagat Singh & Ms. Deepa Arya,
Adv.

versus

SONIA JUNEJA

..... Respondent
Through: Mr. Praveen Kumar, Adv.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

KAILASH GAMBHIR, J. (Oral)

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1. By this petition filed under Article 227 of the Constitution of India, the petitioner seeks to modify the order dated 26.10.2010 to reduce the maintenance amount to Rupees 3,500/- from the awarded amount of Rupees 14,000/- per month.

2. Arguing for the petitioner, Mr. Jagat Singh, learned counsel submits that the present income of the petitioner is not more than Rupees 6,000/- per month. Learned counsel also submits that the petitioner has been paying the amount of maintenance of Rupees 14,000/- per month towards the maintenance of the respondent and the minor child. Learned counsel also submits that the learned Trial Court has not taken into consideration the amount of Rupees 5,00,000/- paid by the petitioner at the time of anticipatory bail, as from the said amount, the respondent must be either earning

some interest or some other amount by investing the same in some business. Learned counsel also submits that the learned Trial Court has ignored the Income Tax Returns placed on record through which the income of the petitioner was proved between Rupees 4000-5000/- per month.

3. Opposing the present petition, Mr. Praveen Kumar, learned counsel for the respondent, submits that when the respondent was living with the petitioner, then at that point of time a joint account was opened by the petitioner and in the said joint account, certain deposits were being made by the petitioner. Learned counsel also submits that the respondent had never carried on any business, independently or with her husband but the petitioner used to obtain the signatures of the respondent on various papers, as, being the wife, she had to sign these papers. Learned counsel also submits that with a view to make capital, the petitioner had opened the joint account with the respondent, showing the business income being earned by both of them through the said joint bank account. Learned counsel also submits that Rupees 5,00,000/-, as was paid by the petitioner, has been kept in a fixed deposit and the learned Trial Court had clearly held that the said amount paid by the petitioner would be taken into account in the event of any final settlement between the parties. Learned counsel also submits that the said amount of Rupees 5,00,000/- cannot be taken into account, and it was rightly so

not considered by the learned Trial Court as the said amount is not the amount for the interim maintenance of the respondent or the minor child. Learned counsel further submits that as per the Income Tax Returns placed on record by the petitioner, it was quite evident that the petitioner had been paying an amount of Rupees 48,029/- towards LIC premium and Rupees 8,511/- towards general insurance for the year 2009. The contention raised by learned counsel for the respondent is that the petitioner, who is paying about Rupees 50,000/- per month towards his premiums, cannot be said to have been earning an amount of Rupees 4000-5000/- per month. Learned counsel also submits that the petitioner himself has given an offer in the present petition that he can pay an amount of Rupees 3500/- per month towards maintenance of minor child and even if that amount is taken into consideration, it cannot be assumed that the petitioner would be earning an amount of Rupees 4,000-5,000/- per month. The contention raised on behalf of learned counsel for the respondent is that the petitioner has deliberately suppressed his correct income and, therefore, the learned Trial Court, based on some guess work, has correctly arrived at the income of the petitioner from his business at Rupees 30,000/- per month.

4. Refuting the said submission, Mr. Jagat Singh, counsel for the petitioner submits that the insurance premiums are being paid by the father of the petitioner from the business earnings and, therefore,

the said amount of the premiums being paid by the petitioner cannot be said to be from the income earned by the petitioner.

5. I have heard learned counsel for the petitioner at considerable length.

6. The petitioner has filed the present petition praying that the maintenance amount of Rupees 14,000/- awarded by the learned trial vide order dated 26.10.2010 be reduced to Rupees 3500/- on the ground that the appellant does not have the means to pay such a high amount and that the learned trial court fell in grave error while calculating the said amount.

7. It is not in dispute that the parties got married on 15.2.2010 and out of the said wedlock a girl child was born on 1.3.2003. The petitioner filed a petition for divorce under section 13(1)(ia) of the Hindu Marriage Act, 1955 (HM Act) and during the pendency of which an application under Section 24 of the HM Act was filed by the respondent. The learned judge vide order dated 26.10.2010 awarded an amount of Rupees 7,000/- per month to the respondent as well as the minor child each from 24.2.2010 till the disposal of the petition, feeling aggrieved with which the petitioner has preferred the present petition.

8. The plea taken by the counsel for the appellant is that the trial court committed an illegality in estimating the income of the petitioner to be Rupees 30,000/- as the petitioner does not earn

anything more than a meager amount of Rupees 4,000/-. The respondent on the other hand has submitted that the petitioner has played fraud upon the Court by disclosing his income only at Rupees 4,000/- per month as he is from an upper middle class family and has a good income.

9. It has become a common feature that in an application under Section 24 of the HM Act, the applicants seeking grant of interim maintenance would inflate the income of the non applicant spouse and whereas on the other hand the non applicant spouse would never disclose his or her true income and incorrectly claims to be a person of small means. It is often seen that none of the parties truthfully disclose their incomes, in which case the only option left for the court is to do some guess work.

10. The learned Trial Court has based on the material placed on record estimated the income of the petitioner to be not less than Rupees 30,000/-, which in my considered view is not an obscene amount looking at the standard and status of the parties. The purpose of Section 24 is to prevent the unearning spouse to be prevented from vagrancy and destitution and to make him/her live with dignity during the pendency of the proceedings. With none of the parties disclosing the actual income, the maintenance amount and the income cannot be calculated with mathematical precision. The learned Trial Court has divided the said estimated income into four cakes and has thus

awarded the amount of Rupees 7,000/- to the respondent wife and Rupees 7,000/- to the minor child. I find no perversity in the said amount of maintenance awarded by the learned Trial Court. It is the duty of the earning spouse to pay the non earning spouse and the husband in the present case cannot shirk away from the duty by claiming to be able to give a paltry amount of Rupees 3,500/- to the respondent and the child. In any case I find merit in the reasoning given by the learned trial court that the husband cannot be parting with the amount of Rs.3500 if his total income is at Rupees 6,000/- only.

11. In the light of the foregoing, this court does not find any merit in the present petition and the same is hereby dismissed.

KAILASH GAMBHIR,J

DECEMBER 19, 2011
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