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* IN THE HIGH COURT OF DELHI AT NEW DELHI

I CM(M) 1506/2009

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Judgment Delivered on: 31.03.2011

Neeta Gupta

..... Appellant

Through: Mr. A.K.Singh and Mr. Fauseef Akhtar

versus

Pankaj Sarogi

..... Respondent

Through: Ms. Rekha Aggarwal and Mr. Gajraj Singh Advocate.

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) Petitioner is aggrieved by the order dated 5.10.2009 passed by the Trial Court dismissing the application filed by the petitioner under section 24 of the Hindu Marriage Act seeking interim maintenance of Rs. 50,000/- p.m. and Rs. 55,000 towards litigation expenses.
- 2) The brief facts which are necessary to be noticed for disposal of the present petition are that marriage between parties was solemnized on 02.07.2007 according to Hindu rites and ceremonies at Tivoli Garden, New Delhi. The parties went to Goa for their honeymoon. However soon thereafter, the parties separated and since 18.09.2007 they have been residing separately. The petitioner has alleged that she was forced to leave her matrimonial home on

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16

18.09.2007 due to persistent nagging, torture, abuses, demand of dowry, insults and humiliation by the respondent and also because of the reasons that the respondent being impotent was unable to consummate the marriage. The petitioner filed a petition for nullity and annulment of marriage under Section 12 of the Hindu Marriage Act on the ground of non consummation of marriage. Additionally, an application seeking interim maintenance under Section 24 of the Hindu Marriage Act was also filed by the petitioner seeking interim maintenance @ Rs 30,000 p.m.

- 3) It is contended by the counsel for the petitioner that the Ld. Trial Court has erred in dismissing the application filed under Section 24 for grant of interim maintenance primarily on the ground that the petitioner was fully capable of maintaining herself and it is only with an intent of drawing maintenance from the respondent that she has not secured an employment. It is submitted that the trial court while dismissing the application has held that the petitioner is a graduate in English and is fully capable of maintaining herself. It is next submitted that the Ld. Trial Court has lost track of the fact that the petitioner is unemployed and is only a graduate in English while the respondent is an engineer from a premiere institute of BITS Pilani. It is submitted that the Ld. Trial Court has failed to distinguish between the ability to earn and actual earning and has thereby erred in passing the impugned order.

- 17
- 4) Mr.AK. Singh, submits that the trial court has given undue importance to the Income Tax return of the petitioner and has lost track of the fact that the Income-tax return pertains to the period prior to the marriage of the petitioner and in any case the amounts shown were spent by the petitioner at the time of her marriage.
 - 5) The counsel for the petitioner submits that the trial court has erroneously overlooked the admission made by the respondent in the matrimonial advertisement with regard to his earnings in www.jeevansathi.com. It is next submitted that the trial court while noting that the respondent has concealed his income completely overlooked the conduct of the respondent on the ground that the petitioner wife was unable to disclose the name and details regarding the business and sources of income of the respondent.

The Trial Court while dismissing the application held as under :

"the petitioner though pleaded that the respondent is carrying on the business of real estate and is earning Rs. 100,000/- p.a. but has failed to mention even the name under which and place from where he is carrying on the said business. Even no document including photograph has been filed to substantiate the same. The petitioner also failed to furnish details of the bank accounts, fixed deposits, shares, securities and immovable properties possessed by the respondent".

- 6) It is next submitted by the counsel for the petitioner that the petitioner never worked prior to her marriage and is unemployed having no source of income and is incapable of maintaining herself. Accordingly, the respondent is under a duty in law to maintain the petitioner and provide the petitioner with all amenities and facilities as were enjoyed by her in her matrimonial home.
- 7) The Counsel for the petitioner has vehemently argued that the respondent an engineer from BITS Pilani and has a work experience of more than 10 years and is a man of means. It is further submitted that the respondent belongs to a well established business family and has his residence and office in Noida. It is next submitted that the respondent is running and managing his own IT Software and real estate business and has many fixed deposits, shares, securities and immovable properties in his name. The counsel for the petitioner has asserted that the respondent is earning more than Rs. 10, 00,000/- per annum. In support of this plea, the petitioner has relied on the matrimonial advertisement posted by the respondent on the website www.jeevansaathi.com. Mr.A.K.Singh, submits that the Trial Court has ignored the admission of the respondent and did not rely on the advertisement wherein the respondent has himself admitted that he earns Rs. 10, 00,000/- p.a. It has further been contended by the counsel, that in view of the fact that the respondent has an experience of more

than ten years it cannot be believed that he is earning only a meagre sum of 1,30,000/-p.a.

- 8) Ld. Counsel for the petitioner submits that Trial Court erred in drawing an incorrect corollary from the fact that since the petitioner was unable to disclose the name of the business entity under which the respondent was carrying out his business, the plea of the petitioner could not be believed. Ld. counsel asserts that merely because the petitioner could not give the name or the details of the business of the respondent, the same could not be a ground to dismiss the application of the petitioner.
- 9) Mr.Singh, counsel for the petitioner has also strongly urged that the Trial Court has grossly erred in relying on the documents including but not limited to the petitioners income tax returns of the petitioner. Mr.Singh submits that the income tax returns filed for the assessment year 2006-2007 show that the independent income of the petitioner is Rs.1,36,000 p.a. and an interest income of Rs.32,548 accrued to the petitioner. The counsel submits that the petitioner never got an opportunity to rebut the documents as the petitioner was never served with a copy nor were the documents placed on record. The submission of the petitioner has been disputed by the counsel for the respondent. Be that as it may the counsel for the petitioner submits that the income tax returns which were relied upon pertained to the period of 2006-2007 i.e. prior to the date of marriage of the petitioner with the respondent.

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It is submitted that the petitioner had some savings before marriage which had accumulated over the years from contributions by her father and occasional part time jobs with her relatives. It is further submitted that the income and employment with M/s Bhageria Investment and Finance Ltd and M/s Suvidha Jewellers as shown in the Income tax returns placed on record were only for tax planning purposes and not that the petitioner was regularly and gainfully employed. The Company M/s Bhageria Investment and Finance Ltd belonged to the petitioner's uncle. It is next submitted by the counsel for the petitioner that Rs.1,20,000/- that is shown as investment with M/s Bhageria Investment and Finance Ltd. was in fact part payment of the non refundable share application money made by the petitioner. It is further submitted that in any case the money was transferred with the petitioner's consent in favour of her brother Sh. Bharat Gupta on 26.05.2007; that is prior to her marriage and the respondent cannot claim any benefit on account of this amount. The petitioner further submits that the investment of Rs.1,20,000/- that has been shown to be made with M/s Suvidha Jewellers is also for tax planning purposes and the firm was declared bankrupt since 2002. Further, the petitioner had transferred the right to recover loan of Rs. 1, 20,000/- in favour of her brother prior to her marriage. In any case the petitioner submits that whatever saving she had before marriage was spent in making various arrangements for her marriage like booking

21

banquet halls, purchase of clothes, jewellery etc. The petitioner has placed copies of invoices, memos on record to substantiate her plea. The counsel next submits that given that all the savings and investments were either spent or transferred prior to the petitioner's marriage, it cannot be said that the petitioner has wilfully incapacitated herself.

- 10) Counsel for the petitioner submits that the respondent has misled the trial court and has failed to file relevant documents on record, which are within the special knowledge of the respondent. It is next submitted that the respondent has grossly misled the trial court by not filing his balance sheet, profit and loss account of his company and financial statements along with his income tax returns. In addition to above, the petitioner has also argued that since the respondents bank details, details of fixed deposits and other assets were within his special knowledge it was his duty to disclose the same before the Trial Court. Accordingly, it is submitted that the respondent is not entitled to benefit from the fact that the petitioner was not able to procure details of his business, fixed deposits and finances.
- 11) Mr.A.K.Singh, counsel for the petitioner submits that it is the duty of the respondent, husband, to maintain the petitioner. It is further submitted that the petitioner is entitled to enjoy a similar status as was enjoyed by her in her matrimonial home. The counsel has placed reliance on **Jasbir Kaur Sehgal vs. District Judge**

29

Dehradun and ors, reported at **(1997) 7 SCC7**, wherein it has been held as under:

"...No set formula can be laid for fixing the amount of maintenance. It has, in very nature of things, to depend on the facts and circumstances of each case. Some scope for leverage 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 those he is obliged under the law and statutory but involuntary payments or deductions. 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".

- 12) The counsel for the petitioner has further placed reliance on **Alok Kumar Jain v. Purnima Jain**, 2007(96)DRJ115 wherein it has been held as under:

"Further, where it is noted that the respective spouses have not come out with a truthful version of their income, some guesswork has to be resorted to by the Court while forming an opinion as to what could possibly be the income of the 2 spouses. This guesswork has to be based on the status of the family, the place where they are residing and the past expenses on the children, if any".

- 13) While placing reliance on the aforementioned judgement, the counsel for the petitioner submitted that in the present case the respondent has not truthfully disclosed his income in order to escape from the liability of paying maintenance to the petitioner

wife, accordingly, the present case is a case wherein this court would need to guess the income of the respondent and impart justice.

- 14) The counsel for the respondent has raised an objection with respect to the maintainability of the present petition under Article 227 of the Constitution of India. It is contended by the counsel that the present petition is an abuse of the process of law and the High Court under its supervisory jurisdiction cannot review or reweigh the evidence/material before the Trial Court nor can the High Court upset a finding of fact howsoever erroneous it may be. Accordingly it is contended by the counsel that the present petition should be dismissed.
- 15) The counsel of the respondent has specifically denied the allegation made and contentions raised by counsel for the petitioner. In reply to the contention of the petitioner that copies of certain documents, replies were never served on the petitioner, the respondent has stated that the documents were served on the petitioner's counsel vide registered post dated 15.09.09. It is further stated that the receipt of the envelope dated 15.09.09 has been admitted by the counsel for the petitioner however, the documents were not rebutted nor any reply was filed to the contentions of the respondent. It is submitted that given that receipt of the envelope carrying the documents has been admitted, it cannot be believed that the documents were not received by the petitioner.

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- 16) It is submitted by the counsel for the respondent that the respondent is working as a freelance website designer and consultant and is earning Rs. 1, 30,000 /-p.a. It is submitted that the figure of Rs. 10, 00,000/- p.a as stated in the matrimonial advertisement is a clerical mistake. The counsel submits that the respondent has filed copies of last four years Income tax returns in support of his plea and accordingly has disclosed his income truthfully before the Trial Court.
- 17) The counsel for the respondent next submits that the petitioner is well educated and has sufficient money of her own and is not entitled to any maintenance. The respondent has placed reliance on the Income tax returns of the petitioner and has submitted that the income of the petitioner is Rs. 1, 36,046 for the financial year 2006 -2007. It is further stated that the petitioner has sufficient savings and assets to the tune of Rs 8, 00,000 and is earning interest of Rs. 32,000/- p.a.
- 18) I have heard the counsels for the parties and also perused the order dated 5.10.2009 and various documents placed on record. The basic facts are not in dispute that marriage between parties was solemnized on 02.07.2007 and owing to marital discord the parties started residing separately since 18.09.2007.
- 19) The respondent has challenged the maintainability of the present petition under Article 227 of the Constitution on the ground that the this court , under Article 227 , does not have the power to reweigh

95

the evidence or to upset a finding of fact. I find no merit in the contention of the counsel for the respondent. The powers vested to the High Court under Article 227 of the Constitution of India are very wide. No doubt the court must be slow to interfere in the order passed, but wherever there is grave miscarriage of justice, the High Court must exercise its power of superintendence.

- 20) A perusal of the impugned order shows that the application of the petitioner for grant of interim maintenance was dismissed primarily on the grounds (i) that the petitioner has despite being well qualified and capable of earnings has wilfully not taken up any employment (ii) That the petitioner could not substantiate her claim that the respondent was earning Rs.1,00,000 p.m. as she has failed to disclose the name and place from where the respondent was carrying out his business and place any documents on record. It has been further been held by the Trial Court that the petitioner has failed to furnish the details of the fixed deposits, shares, securities and details of immovable properties possessed by the respondent. Perusal of the impugned order shows that the Trial Court has taken note of the fact that the respondent has wilfully not disclosed his true and correct income but has failed to grant any relief to the petitioner. Relevant portion of the Trial Court order reads as under:

"It cannot be believed that the respondent being B Tech from BITS Pilani as a IT software Engineer having a business background is earning Rs. 11,500 p.m.

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approximately. Hence it can be inferred that the respondent has not disclosed his true income to the court to avoid payment of maintenance to the petitioner".

- 21) 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. (See *Jasbir Kaur Sehgal (Smt.) v. District Judge, Dehradun & Others*, reported at (1997) 7 Supreme Court Cases 7).
- 22) 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. As observed in ***Bharat Hegde v. Saroj Hegde***, reported at 140(2007)DLT 16, it is true that it is the tendency of the parties to not disclose their true income. relevant portion of which reads as under:

"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 interim maintenance,

27

there cannot be mathematical exactitude. The Court has to take a general view.

- 23) In order to ensure that justice may be imparted and that a spouse, incapable of maintain themselves does not lead a life of deprivation. The Supreme Court of India in the case of **Jasbir Kaur Sehgal (Supra)**, has 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*".
- 24) Although, in this Court's opinion there cannot be an extensive 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) Credit cards;
 - (vi) Capacity to repay loan.
 - (vii) Club Membership;

98

- (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.

25) 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.

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- 26) It is a settled principle of law that 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 circumstances of each case. Some scope for leverage can, however, be always there. The court has to consider the status of the parties, their respective needs, the 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 lifestyle 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.
- 27) The trial court dismissed the application of the petitioner seeking maintenance, on the ground that the petitioner is well qualified and is capable of maintaining herself.
- 28) I do not agree with this view of the trial court as in this day and age it cannot be said that a person merely holding a degree of graduation in English is well qualified. It is common knowledge that jobs are scarce and a graduate in English cannot be said to be in demand, unlike a B.Com. or a person who has a professional degree, especially when compared to the educational qualifications and experience of the respondent. Even otherwise there is nothing

on record to show that either before marriage or after marriage the petitioner was actually employed. Though the petitioner has failed to place on record any document to substantiate her claim that the respondent is earning Rs.1,00,000 /- p.m. The matrimonial advertisement that was placed by the respondent on the website www.jeevansaathi.com stating that his income was Rs. 10,00,000 p.a. has been placed on record. In view of the ^{contents of the} advertisement and the fact that the respondent is an engineer from BTS Pilani and has an experience of more than 10 years, it cannot be believed that the respondent is now working as a freelance website designer and consultant and is earning a mere sum of Rs.1,30,000/- p.a. Even otherwise, there is no force in the submission of counsel for the respondent that the figure of Rs.10.0 lacs per annum ^{mentioned} in the matrimonial advertisement was typographical error. There is nothing on record to show that the respondent ever took any steps

to correct the error.

→ Add para 32 & 34.

- 29) The income tax returns of the respondents that have been placed on record by the respondent do not evoke any confidence especially in the light of the surrounding circumstances the educational qualifications of the respondent, his work experience and the admission made by the respondent in the matrimonial advertisement wherein he has stated that he is earning more than Rs.10,00,000/- p.a

- 30) A Reference may be made to a Division Bench decision of the Bombay High Court in **Vinod Dulerai Mehta v. Kanak Vinod Mehta** reported at **AIR1990Bom120** wherein the court held that the income tax returns cannot be taken as a sole basis to assess the income of a party. The relevant portion of the judgment reads as under:

"The learned judge therefore has come to the conclusion that the Income Tax returns filed by the husband are not conclusive of the true income of the husband and his income has to be assessed in the light of the said other consideration as well. We do not see anything wrong in this approach. As is common knowledge, Income Tax returns do not reflect the true position of the income of a party for several reasons, and cannot be taken as the sole guide for determining it in proceedings such as the present one".

- 31) The judgment of the division bench is fully applicable in the facts of this case. In today's day and age when tax avoidance and tax evasion is the norm, the income tax returns cannot be blindly taken as correct. In the instant case too I find that the income tax returns have suppressed the real income of the petitioner especially in view of the educational qualifications, status and the lifestyle enjoyed by the parties of the parties.
- 32) The status of the parties is evident from the copies of the wedding cards, which showed that the marriage functions were held at expensive venues in a lavish manner and the parties went to Goa for their honeymoon. The photographs that have been placed on record show that the parties enjoyed a high and comfortable status of living.

32

33) I find force in the submission of the counsel of the petitioner that the income tax returns of the petitioner which was placed on record by the respondent pertaining to the period prior to marriage. The trial court has also observed that the stand of the petitioner with regard to the earning of the respondent is contradictory, inasmuch that in the petition under section 24 of the Hindu Marriage Act petitioner has stated that the income of the respondent is Rs.10.0 lacs per annum and in the petition under section 125 Cr.P.C. the petitioner has stated that the income of the respondent is Rs.6.0 lacs per annum. It is not unusual in the Indian set up that the wife is not aware of the details of the business activities of the husband even otherwise in this case the parties stayed together for a short period during which the wife has made various allegations of demand of dowry and of torture against the husband, thus in my view in case the wife was unable to give complete details the court could have well asked the husband to disclose the same on affidavit.

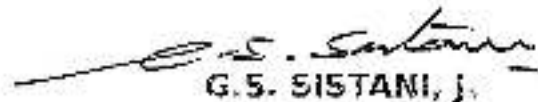
34) The trial court has also observed that petitioner is earning [Rs.1,36,046/- per annum + Rs.32,000/- per annum]. The petitioner has rendered proper explanation with regard to these amounts which pertain to the period prior to her marriage and it has been stated that this amount has been spent on the marriage. The trial court has wrongly applied the law to the facts of this case.

37

35) Based on settled position of law and facts of this case I find no force in the submission of the respondents that the petitioner is fully capable of maintaining herself. Keeping in mind the status of the parties and the fact that the petitioner wife is unemployed and only a graduate the impugned order is set aside. The respondent shall pay an interim maintenance of Rs.12,500/- p.m. to the petitioner from the date of the application. All arrears to be cleared within eight months of receipt of this order in equal instalments.

March 31, 2011

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G.S. SISTANI, J.