

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

Date of decision: 17th February, 2012

+ **FAO 448/2011**

% **ASHWANI MEHTA** **....Appellant**
Through: Mr. Vikas Arora, Adv.

Versus

MRS. VIBHA MEHTA **..... Respondent**
Through: Mr. K.K. Manan, Adv. with Mr.
Mustafa Arif & Mr. Nipun Bhardwaj,
Adv.

AND

+ **FAO 521/2011**

% **MRS. VIBHA MEHTA** **..... Appellant**
Through: Mr. K.K. Manan, Adv. with Mr.
Mustafa Arif & Mr. Nipun Bhardwaj,
Adv.

Versus

ASHWANI MEHTA **....Respondent**
Through: Mr. Vikas Arora, Adv.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. Both parties, being husband and wife, are dissatisfied with the order dated 09.09.2011 of the Family Court in exercise of powers under Section 125 of the Cr.P.C. awarding a sum of ₹60,000/- per month as maintenance

to be paid by the husband to the wife from the date of filing of the petition i.e. 09.08.2005. When the appeal preferred by the husband came up before this Court, on the objection of the Registry as to the maintainability of the appeal, vide order dated 19.10.2011 the appeal was held to be maintainable and notice thereof was issued and the order of the Family Court in so far as qua the payment of arrears, was stayed.

2. The counsels have been heard. After hearing arguments on 03.01.2012, the husband was given an opportunity to sort out certain matters. Thereafter again on 18.01.2012, the counsels were heard.

3. The wife had claimed maintenance at the rate of ₹1,50,000/- per month. She is aggrieved from the grant of maintenance at the rate of ₹60,000/- per month only and in her appeal seeks maintenance at the rate of ₹1,50,000/- as claimed.

4. The Family Court has in the impugned order noticed/observed held:

- (i) that the parties were married on 19.01.1981 and have two children from the wedlock;
- (ii) they have been living separately in the same house;
- (iii) that the matter regarding maintenance was settled on 01.02.2002 when the husband had agreed to pay maintenance of ₹1,50,000/- per month to the wife;
- (iv) that the maintenance in fact was so paid at the said rate for four months but subsequent payments were stopped;

- (v) the wife is not working and has no source of income;
- (vi) the husband is a well qualified Doctor running Kolmet Hospital at Pusa Road, New Delhi and earning ₹35/- lakhs per annum as per income tax record and also holds several other properties;
- (vii) it was the case of the husband that he was looking after all the financial needs of the wife and as such she did not require any maintenance;
- (viii) that the wife was an active partner of hotel Marina and had 8% profit sharing in the said partnership;
- (ix) that in a dispute relating to the partnership of hotel Marina, a sum of ₹2/- crores had been deposited in the Court to be withdrawn by the wife;
- (x) that the wife also owned a 1000 sq. yards plot at Faridabad and an Opel Astra car;
- (xi) that though the wife had led evidence but no evidence was led by the husband;
- (xii) that the needs of the wife like food, electricity, residence etc. were being looked after by the husband since she was staying in the same house;

The Learned Family Judge arrived at the figure of ₹60,000/- per month as maintenance.

5. We will first deal with the argument of the need of the wife for maintenance when she is residing in the matrimonial house and when admittedly she has not to spend any amount on her food, residence and residential amenities. We are unable to accept the contention of the husband that, the husband if provides food and residence, owes nothing further to the wife. Attention of the counsel for the respondent is invited to age old concept of “Kharcha-i-Pandan” as also noticed by privy council in ***Nawab Husaini Begam v. Nawab Khwaja Muhammad Khan*** MANU/PR/0007/1910. The women, even when rarely going out of the house and when the entire expense of the household was met by the husband, were still found entitled to an amount for their own spending. In certain regions, the said amount also went by the name of “Hath Kharch”. The expression used in the English system was “Pin Money”. Even otherwise, it is unbelievable that if the relations had been good, the husband if had been providing boarding and lodging, would not have provided anything further to the wife. The Supreme Court recently in ***Vinny Parmvir Parmar v. Parmvir Parmar*** (2011) 7 SCALE 741 has reiterated that the test to be applied in adjudication of maintenance is, to place the wife in the same position as she would have been if the relationship had continued. It has come on record that the wife has a car which she states is thirteen years old, however money is required for running the car. Similarly, money is required to fulfill the other day-to-day needs including of clothing, personal effects etc. of the wife. Similarly money is required for entertainment. A life on alimony is not to be a life different from what the wife would have led if the relationship had not gone sour. The quantum of maintenance *inter alia* depends upon the status of the husband.

6. During the hearing before us also, it was admitted that the wife is not working. It was further admitted that she was a partner in hotel Marina. However, it is further admitted that disputes and differences had arisen with respect to the said partnership in which the father of the husband and certain other persons are other partners. While the father of the husband claims that the 'wife' in a litigation with respect to the said partnership had agreed to dissolution thereof on receipt of ₹2/- crores and which was deposited, the wife controverts the same. The fact remains that the said sum of ₹2/- crores has not come into her hands and the dispute relating to partnership is still pending. It is also a fact that owing to the said dispute, the wife is not getting any share of profits of the said partnership. Thus the wife has no source of income.

7. The wife, as aforesaid is the owner of a plot of land ad-measuring 1000 sq. yards at Faridabad. However the said plot also is not earning her any income. The argument is that she can sell the same and would get enough sale consideration, to be not entitled to any maintenance. On the contrary, the wife contends that neither she is in possession of the documents of title of the said plot and nor she is in a position to immediately sale the same owing to her husband and his family members having allowed some other persons to encroach thereon. After the hearing on 03.01.2012, we had adjourned the matter to explore the possibility of sale of the said plot. However, no possibilities thereof emerged. The ownership of the said plot thus cannot be a factor influencing the quantum of maintenance.

8. That leaves us with the question of quantum of maintenance. The wife has predicated her claim at ₹1,50,000/- per month on the basis of

agreement of the year 2002. The said agreement was proved by the wife in her evidence before the Family Court. The said agreement is as under:-

“We, Ashwini and Vibha are married and we confirm that we would like to continue loving and living with each other.

We also confirm that we will like to live our lives in absolute harmony and perform all the responsibilities of a husband and wife.

We, commit to be faithful in our married life, provide financial, emotional and mental support in all times.

In case of any breach of trust on account of being unfaithful, Ashwini would provide his wife, Vibha Mehta.

i) Continue to live on the 2nd Floor of D-196/D-197, Defence Colony, New Delhi, freely.

ii) Provide financial monthly support of ₹1,50,000/- (Rupees One Lakh Fifty Thousand Only) to Vibha.

He will be responsible in bringing up the children and provide for them.

This document cannot be used in any form or forum without the consent of Anil Taneja, the arbitrator for this document.

This entire document has been written by arbitrator Anil Taneja, in his own handwriting.

This document is signed on 18th Feb' 2002 in New Delhi at D-196/197, Defence Colony."

9. We have asked the counsel for the husband as to why the husband should not be held bound by the same.

10. He contends (i) that the said agreement is forged, (ii) that the same was not to be used before any fora, (iii) that the husband had thereunder agreed to provide financial support of ₹1,50,000/- only in the event of being unfaithful and it has not been proved that he was unfaithful.

11. We have perused the cross examination of the wife by the counsel for the husband on the aspect of the said agreement. Therefrom, we are unable to hold that there is any challenge to the genuineness of the same. It has not been so contended strenuously either. The husband did not step into the witness box to deny the said argument. Once the agreement is established, mention therein of the condition of being unfaithful, for such financial support or not to use the same in any Court are meaningless and not found to be relevant as far as the quantum of maintenance is concerned. The financial support of ₹1,50,000/- per month which the husband in the said agreement had agreed to pay cannot be said to be a compensation for being unfaithful which in any case is an offence in law. The word unfaithful in

the said agreement connoted the parties being unable to stay as husband and wife and which admittedly they are not. The term therein of non use thereof in Court without permission of Mr. Anil Taneja also has not been established. As aforesaid, the husband has chosen not to come in the witness box. The husband has not established that Mr. Anil Taneja has any objection to the use of the said document in the Court. Moreover, it is quite evident that the document was created to bind the husband and hence the clause therein to the effect that it cannot be used in Court without the consent of Mr. Anil Taneja is found to be not preventing the wife from relying thereon.

12. The husband as aforesaid has failed to appear in the witness box. The only inference which can be drawn is that had he so appeared, he would have been forced to admit his income and assets to be enough to justify what he had agreed to pay i.e. ₹1,50,000/- p.m.

13. The Family Court however in the judgment impugned in these appeals has not given any reason to not bind the husband to the rate of maintenance which he had agreed in the said agreement.

14. We do not see any reason to differ from the quantum of maintenance agreed by the parties themselves specially when we have nothing before us to show that there is any reduction in the income of the husband since the year 2002 when he had agreed to the said quantum. Rather with the passage of time in the normal course, the income of the husband would have gone up.

15. However, since maintenance is in the form of subsistence, we are of the view that while the arrears in terms of order of the Family Court should be confined to maintenance at the rate of ₹60,000/- per month, the future maintenance should be in terms of the agreement at the rate of ₹1,50,000/- per month.

16. Accordingly, the husband is directed to pay the arrears of maintenance at the rate of ₹60,000/- per month within six weeks hereof and if has not paid maintenance since then @ ₹ 1.50 lac p.m. to pay difference between ₹60,000/- and ₹1,50,000/- with effect from the date of the order of the Family Court and till the end of February, 2012 within four weeks hereof and to with effect from the month of March, 2012 pay maintenance at the rate of ₹1,50,000/- per month, to the wife.

17. FAO 448/2011 preferred by the husband is accordingly dismissed and FAO 521/2011 preferred by the wife is partly allowed. The matters having been disposed of expeditiously, no order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

FEBRUARY 17, 2012

‘gsr’..