

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

DATE OF DECISION : 06.11.2012

+ **FAO NO. 449/2012**

SUNIL JAIN

..... Appellant

Through: Ms. Anshu Priyanka, Advocate.

versus

SMT. SUMAN JAIN

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

Caveat No. 1129/2012

None appears for the caveator. However, in view of service of notice on the caveator by speed post dated 02.11.2012, the receipt whereof is annexed on the appeal, the caveat stands discharged.

FAO NO. 449/2012 & C.M. Nos. 18794-96/2012

1. The appellant has preferred the present appeal under Section 19 of the Family Courts Act, 1984, to assail the order dated 23.5.2012 passed by Shri Kamlesh Kumar, Addl. Principal Judge, Family Court, Rohini, Delhi, in HMA No. 700/2011 titled "Shri Sunil Jain Vs. Smt. Suman Jain" whereby he has disposed of the respondent's application under Section 24 of the Hindu Marriage Act, 1955 for grant of maintenance pendente lite.

2. The parties were married on 24.6.2010 at Delhi. The case of the respondent was that she was staying in her parental house; she was a house wife and had no source of income and was dependent on her parents for her day-to-day needs. She also claimed that the appellant was running a

flourishing business in the name and style of M/s Rishab Electricals at Trinagar and had an income of Rs. 2 lacs per month; she claimed that the appellant owns a factory which makes armature and copper wire and has an income of Rs. 2.5 lacs there from; she also claimed that the appellant owns a three storeyed house and had income of Rs. 10,000/- from his agency with the Life Insurance Corporation; she claimed that the appellant was leading a luxurious life with no other liability. She claimed maintenance of Rs. 50,000/- per month and a further sum of Rs. 1,00,000/- towards litigation expenses.

3. The said application was contested by the appellant by claiming that the respondent was educated and was having her own source of income and assets. It was claimed that the respondent is a B.Sc.(IT); has done Diploma in GNIIT Software Engineering from NIIT, Faridabad and has also done programming language, data based language etc.; it was claimed that she was working with Indian Oil Corporation Limited, R&D Center, Faridabad as Management Information System, prior to her marriage; he also claimed that she was still working and drawing a handsome salary. The appellant denied running any business of an electrical shop under the name and style of “M/s Rishab Electricals” or having income of Rs. 2 lacs there from. He also denied having any factory for manufacturing armature and copper wire and having an income of Rs. 2.5 lacs there from. He also denied ownership of three storeyed house. The appellant claimed that M/s Rishab Electricals is the sole proprietary concern of Shri Anil Jain-his brother. The residential property at Trinagar was owned by his father. His mother was the owner of another property at Trinagar in which he has no

right, title or interest. He claimed that his mother and father had disowned him and severed their relations with him. He claimed himself to be an employee in the firm M/s Rishab Electricals with effect from 01.04.2010 drawing a salary of Rs. 6,000/- per month. He further claimed income of Rs. 4,000/- to Rs. 5,000/- per month as commission from the LIC. He also claimed to hold three LIC policies, paying Rs. 66,555/- per annum towards premium. He claimed to be living in a rented accommodation having rent of Rs. 2,750/- excluding electricity and water charges. He claimed to be indebted to the tune of Rs. 3 lacs.

4. The learned Additional Principal Judge has granted maintenance to the respondent at the rate of Rs. 13,700/- per month from the date of the application apart from granting Rs. 8,800/- towards litigation expenses by assessing the income of the appellant at Rs. 41,100/- per month. In doing so, the learned Additional Principal Judge has tested the appellant's case that he had monthly income of Rs. 10,500-11,500/- out of which he pays insurance premium to the tune of Rs. 5,550/- per month approximately and also pays for his residential accommodation at Rs. 2,750/- per month. This does not include electricity and water charges which he has failed to disclose. Therefore, he pays a sum of Rs. 8,300/- per month, towards LIC premium and rent leaving a balance of about Rs. 2200-2700/- per month to meet all his expenses including water and electricity charges.

5. While projecting such a poor financial condition, the appellant also disclosed that he owned shares worth Rs. 3.72 lacs and had bank balance at the relevant time at Rs. 1.32 lacs. He was also possessed of an air conditioner and mobile phone apart from a two-wheeler LML scooter.

6. The learned Additional Principal Judge has observed that the appellant has not disclosed his own assets and source of income and there is no disclosure of his alleged liability of Rs. 3,07,250/- and to whom the same is owed and on what account. On this basis, learned Additional Principal Judge, Family Courts, found that the appellant has manipulated documents to claim that he is an employee of his brother since about two months prior to the marriage i.e. with effect from 01.04.2010.

7. It is common knowledge that once disputes arise between the husband and wife, so as to evade the liability towards maintenance that one or the other spouse may have to meet, the non-applicant's spouse seeks to deflate his or her income by resorting to suppression and misstatements. At the same time, the applicant seeks to inflate the income of the non-applicant and project his/her own financial state as that of penury. The Court, in these circumstances, is left to make an assessment of the income of the parties on its own, on the basis of whatever materials and circumstances that are placed before it.

8. In our view, the learned Additional Principal Judge cannot be said to have erred in estimating the income of the appellant after rejecting his case that his income was only to the tune of Rs. 10500-11500/- per month, looking to his admitted expenses, bank balance and assets etc. Pertinently, the appellant had claimed that his parents had spent around Rs. 22 lacs at the time of marriage of the parties. The claim of the appellant to be earning Rs. 10500-11500/- per month, in this background, also could not be accepted. We are, therefore, unable to agree with the submission of learned counsel for the appellant that the assessment of the appellant's income by the

learned Additional Principal Judge at Rs. 41,100/- per month is on the higher side. There can be no doubt that if the said assessment of the appellant's monthly income is fair and reasonable, the grant of maintenance at Rs. 13,700/- per month, and litigation expenses at Rs. 8,800/- certainly cannot be said to be excessive. Accordingly, we find no merit in this appeal and dismiss the same.

(VIPIN SANGHI)
JUDGE

(SANJAY KISHAN KAUL)
JUDGE

NOVEMBER 06, 2012
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