

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

Reserved on: 21.11.2013
Pronounced on: 20.12.2013

+ **FAO 143/2013, C.M. NO. 4725/2013**

VIKAAS AHLUWALIA

..... Appellant

Through: Sh. Y.P. Narula, Sr. Advocate with Sh.
Aniruddha Choudhary and Sh. Abhey Narula,
Advocates.

Versus

SIMRAN AHLUWALIA

..... Respondent

Through: Sh. Kirti Uppal, Sr. Advocate with Sh.
Manish Saryal, Ms. Sushma Unni and Sh.
Anshumaan Sahni, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S. RAVINDRA BHAT

%

1. The present appeal, arising out of matrimonial proceedings, has been filed by the respondent/husband, who impugns an order dated 08.02.2013 of the Family Court, Saket, New Delhi in an application under Sections 24 and 26 of the Hindu Marriage Act, 1955 (hereafter "*HMA*") in pending matrimonial proceedings, i.e. HMA 134/2011. The Family Court directed the husband to pay `1,25,000/- per month as interim maintenance to the wife and a further sum of `1,00,000/- as litigation expenses. The husband/appellant today claims that the direction given is beyond his means, since his salary is `13,88,862/-

before tax deduction. After deduction, he claims that his net income is approximately `10.90 lakhs.

2. The parties to the litigation married on 26.11.2001 in accordance with Hindu rites and customs. Given that the marriage was against the husband's parents' wishes, the couple was living separately in a rented accommodation at Jal Vayu Vihar, Gurgaon, after marriage. It is alleged that in April-May, 2001, the husband met his parents at the wife's instance as she was pregnant and needed to be cared for. The husband's parents allowed the parties to reside with them at B-10, Saket, New Delhi after various ceremonies, celebrations and pujas. On 04.09.2002, the baby was born to the parties and her arrival was celebrated by the family. However, it is claimed that after living together in the husband's parents' house for some time, the couple developed differences, and consequently, in March, 2008, they separated and the wife moved to her parental home in Gujrat Vihar, along with the minor daughter. The husband's father had purchased a residential high-end apartment at ATS Green, Noida in his name for the wife's residence and he gave her money to furnish it. The wife, however, refused to shift into the apartment allegedly claiming that it had not been purchased in her name. Thereafter, she filed a petition for restitution of conjugal rights under Section 9 of the HMA on 01.09.2008 against the Appellant, being HMA 247/08 in the Karkardooma Court. That petition and the interim maintenance application were withdrawn on 04.07.2009, when the appellant/husband agreed to live with the respondent/daughter keeping in view the welfare of their daughter.

3. Subsequently, the appellant claimed the custody of his daughter under Section 25 of the Guardians and Wards Act (G.P. No.8/2008) which is pending in the Court of the Guardian Judge, Karkardooma Court, Delhi. The wife filed a criminal complaint on 14.07.2009, against the husband, his parents and married sisters, which according to the husband, was false and frivolous. The wife, thereafter, on 25.08.2009, acting for herself and as a guardian of the minor daughter of the parties, filed a suit for maintenance and separate residence under *the Hindu Adoptions and Maintenance Act, 1956* before this Court (hereafter called "*the maintenance suit*"). An application seeking an interim monthly maintenance of `5,00,000/- was also filed in that suit. The Court by order dated 05.03.2013 awarded `75,000/- per month as the interim maintenance, (in the maintenance suit) which the appellant has started to comply with. The wife, acting as a next friend of the minor daughter of the parties, also filed a suit for partition against all the family members, being Suit No. 2202/2011 and same is pending till date.

4. The husband, claiming that the marriage of the parties had completely broken down, filed a divorce petition against the wife on 07.01.2011 on the grounds of cruelty and desertion. In that petition the wife filed her written statement and also filed an application for interim maintenance on 04.08.2011, which was decided by order dated 08.02.2013. This order is the subject matter of the present appeal.

5. The appellant argues that in the maintenance suit filed by the wife, he offered to pay `50,000/- per month towards maintenance of the respondent and the minor daughter, which the wife refused stating

that she would at least require `75,000/- per month. This Court made an order on 25.04.2011 when it permitted the husband to deposit `15,000/-. Since the wife was unwilling to accept the said amount, the Court directed it to be kept in a FDR for a period of one year. Further, it is submitted that in the partition suit, the wife impleaded all the companies of the husband's father as defendants. Therefore, his father filed an application (I.A. No. 11007/2010) seeking deletion of the said companies as defendants in the said suit and this Court by order dated 07.02.2011 deleted all the said companies from the array of parties in the said suit. There is no dispute that that order has become final between both the parties.

6. With respect to the present proceedings, the husband submits that in the application filed under Sections 24 and Section 26 of the HMA on 04.08.2011 before the Family Court, the respondents, *inter alia*, claimed an exorbitant amount of `4,60,000/- per month on various untenable heads. It was submitted that these included costs for security, personnel (`70,000/-), insurance, car maintenance, etc. It was submitted that analysis of the various amounts showed that the annual sum of ` 20,60,000/- was claimed under several other additional heads. It is submitted that these betrayed rank unreasonableness and a tendency to exploit, and further, it is urged that the Court has to consider only expenses based on reasonable probabilities and estimate of having regard to the lifestyle, but not pander to the fancies of an applicant. Counsel emphasized that the assessment of maintenance has to be realistic, based on expenses that can be legitimately incurred. In other words, it cannot become an exercise in asset or wealth building

of the applicant at the expense of the respondent.

7. The husband, in his reply to the said application on 23.11.2011 had also filed three affidavits with regard to his assets and income on 23.11.2011, 13.01.2012 and 31.03.2012. The respondent had filed her affidavit of assets and income on 30.11.2011. That affidavit was not in terms of order passed by this Court in *Puneet Kaur v. Inderjit Singh Sawhney*, CM(M) 79/2011.

8. Learned counsel for the husband submits that the Family Court, Saket heard the arguments of the parties on several dates and has passed the impugned judgment without appreciating the documents and decisions placed on record by the husband. It is submitted that the Family Court fell into error in deciding the quantum of maintenance as the wife never gave any details of her reasonable needs as required under Section 24. Further, it was submitted that the husband's current income is approximately `10,00,000/- per annum, after deduction of tax, as is evidenced from his tax returns for the years 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010- 2011, which were filed on 23.11.2011.

9. Further, counsel highlighted that the wife did not accept the maintenance amounts when tendered, and this fact clearly establishes that she is not in real need of any amount towards maintenance. To the contrary, it is argued that he is not in a position to afford to give her the kind of maintenance amount she claims. It was submitted that apart from bare averments, there is nothing to show that the wife was entitled to her claim of enjoying such a status that compares unfavourably with the lifestyle she enjoys presently.

10. Counsel argued that this Court, in the maintenance suit, correctly assessed the reasonable needs of the wife, and directed payment of `75,000/- per month, in addition to casting obligations upon the husband to ensure that a chauffeur-driven car and a certain quantity of petrol was made available to the wife and children. It was also submitted that the reasonable expenses of the child's upkeep would be the responsibility of the husband, again a factor duly considered and provided for by the Court in the maintenance suit. In these circumstances, argues the learned senior counsel for the husband, this Court should at least modify the impugned order of the Family Court. Counsel emphasized that the Court in the maintenance suit made an order after the directions of the Family Court and the later order should prevail and bind the parties, rather than the faulty and erroneous determination of the Family Court in the impugned order.

11. Per contra, counsel for the wife submitted that the husband has suppressed his true income and earnings. It was argued in this context that the husband is the sole heir to a vast construction and real estate business, controlled by his family. He has thousands of shares of different companies. The husband's family, it is claimed, also has floated various companies in the capacity of an HUF. It is submitted that the husband maintains a car provided by the company for which he works. He had offered a sum of `50,000/- to the respondent which was declined by her. The affidavit filed by the wife disclosed that the husband is salaried director and earns `50,000/- per month and he has offered the same amount to his wife and his child. Hence the Family

Court has correctly held that that the true income of the husband has not surfaced and efforts have been made to hide the truth.

12. In response, the husband submits that he is nominal shareholder in M/s. Ahluwalia Contracts (India) Ltd, and his affidavit dated 23.02.2012 shows that he owns a large number of shares in different companies, which shows that he is has a considerable amount of income. Also, the Court is cognizant of the fact that the husband has not the filed the Income Tax Return for year 2011-2012. It was submitted in this context that the Ahluwalia Group of Companies has considerable turnover, in excess of `1000 crores, and that it has built several prestigious educational institutions, residential complexes, hospitals, industrial estates, five-star and deluxe five-star hotels. The husband's father, it was argued, heads and controls the group. The resources, financial clout and wealth of the husband and his family is unimaginable, in the argument advanced by the learned counsel for the wife. The Family Court naturally took note of all these, and the well-known fact that when matrimonial differences surface, husbands tend to suppress their real income and even resort to asset transfers to avoid payment of legitimate dues to their wives.

13. In her application, the wife clearly specifies the kind of lifestyle and status which she enjoyed during her stay with the husband. She had a supervisor, cook, three helpers, two maids, one gardener, four drivers, one plumber and 24 hours security guards with Group-4 Security gunman at her command. The house was equipped with various electronic gadgets, and she also mentioned the lifestyle to which her daughter was used to such as small swimming pool and

swings installed in the house. To sum up, their house contained all five-star facilities.

14. This Court has had the benefit of considering the Family Court records which were requisitioned for the hearing of the present appeal.

15. The Court, in considering an application for interim maintenance has to take into consideration the financial status of the parties, the earnings and the earning capacity of both the spouses. While granting maintenance, the spouse claiming maintenance should as far as possible be kept in the same status which he or she enjoyed while being in the matrimonial life with the other spouse. Also the family status is another aspect to be considered.

16. In this case, the Family Court has while deciding the application under Section 24 has taken into consideration various factors pertaining to the matrimonial life of the parties, particularly their lifestyle, financial status, etc. This is in line with the decision in *Vinny Parmvir Parmar v. Parmvir Parmar*, (2011) 7 Scale 741, where the Supreme Court held that the quantum of maintenance *inter alia* depends on the status of the husband. There, the Court recalled the considerations as follows:

“12.....The Court has to consider the status of the parties, their respective needs, the capacity of the husband to pay, having regard to reasonable expenses for his own maintenance and others whom he is obliged to maintain under the law and statute. The courts also have to take note of the fact that the amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and mode of life she was used to live when she lived with her husband. At the same time, the amount so fixed cannot be excessive or

affect the living condition of the other party.....”

Equally, in *Jasbir Kaur Sehgal v. District Judge, Dehradun and Ors.*, 1997 (7) SCC 7, the Supreme Court held that there can be no set formula laid down for fixing the amount of maintenance. Rather, it depends on the facts and circumstance of each case. Thus, the Court must consider the status of the parties, their respective needs and the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance. Accordingly, the amount of maintenance should be such that the wife is able to live in “*reasonable comfort*” considering her status and lifestyle she had while living with her husband and she does not feel handicapped during the prosecution of her case. This Court also recollects the decision in *Sh. Bharat Hedge v. Smt. Saroj Hegde*, 140 (2007) DLT 16, which outlined the following relevant considerations to be taken into account, at the time of assessing maintenance claims: Status of the parties, reasonable wants of the claimant, the independent income and property of the claimant, the number of persons, the non-applicant has to maintain, the amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in matrimonial home, non-applicant’s liabilities, if any, provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant, and the payment capacity of non-applicant. Equally, and as it often the case, some guesswork is not ruled while estimating the income of the non-applicants when all the sources or correct sources are not disclosed.

Moreover, the Court recognizes that it must also consider the amount required by the non-applicant to defray the cost of litigation, and the amount awarded under Section 125 of the Code of Criminal Procedure, 1973, if any, which is adjustable against the amount awarded under Section 24, HMA.

17. The husband alleges that the wife's application for maintenance was not supported by any affidavit as per the requirements of Rule 16 of the Delhi High Court Rules, framed under the HMA. That rule states that every application for maintenance *pendente lite*, permanent alimony and maintenance or for custody, maintenance and education expenses of minor children shall be supported by an affidavit and shall state the average monthly income of the petitioner and the respondent, the sources of their income, particulars of other movable and immovable property owned by them jointly or severally, the details of their liabilities, if any, along with the number of their dependents, if any, and the name and ages such of such dependents. The wife's application and the affidavit, as well as the materials relied on during the course of the hearing in the Family Court, in the opinion of the Court, disclosed sufficient and substantial compliance with the underlying requirements of Rule 16.

18. Further, the Family Court went through, and closely considered, the documents that clearly substantiated that the husband was working as a director/promoter in several companies. Indeed, the husband does not deny ownership of substantial shareholding (to the extent of thousands of shares) in different group companies promoted by his father or other members of his family, nor the fact that he has a car

provided by the company he works for. He has also submitted that he has offered a sum of `50,000/- to the wife which was declined by her, and the affidavit filed by him discloses that he is salaried director and earns `50,000/- per month and he has offered the same amount to his wife and his child. The Family Court, in our opinion, not unreasonably held that the true income of the appellant did not surface and efforts were made to hide the true income. The husband has submitted that he is a nominal share-holder in M/s Ahluwalia Contracts (India) Limited. He filed the affidavit dated 30.02.2012 and also various certificates of different companies stating that he was only a nominee director of those companies without any remuneration. The affidavit dated 23.02.2012 shows that the husband owns a large number of shares in different companies and despite the fact that is not drawing any remuneration, this factum of ownership in itself demonstrates that he has a considerable amount of income.

19. The next submission is the effect of the offer of the wife, in CS (OS) 1990/2011 claiming maintenance at `75,000/- and whether the Trial Court erred in overlooking the order made on 20.12.2012 in that suit. The wife had sought for `5,00,000/- as interim maintenance with effect from March, 2008 with escalation of 15% per annum and residence for the plaintiff or in *lieu* thereof a sum of `2,50,000/- per month towards rent. The learned Single Judge directed for monthly maintenance of `75,000/-. Therefore, this submission is not merited.

20. The next submission by the appellant is that the wife's conduct in refusing to accept amounts offered by him at various stages was overlooked. It is a relevant fact that should have received due

consideration by the Court. In *Smt. Indira Gagele v. Shailendra Kumar Gagele*, AIR 1992 MP 72, it was held that though there was no specific provision in Section 24 of the HMA relating to the issuance of such direction in fixing the point of time from which date maintenance *pendente lite* be made operative i.e. either from the date of application, from the date of order or from the date of institution of the suit, this issue is left to the discretion of the Court. Therefore, normally the point of time granting maintenance *pendente lite* would be from the date of application. But, if specific claim is made in the application, then the order may be made operative in consonance with the prayer made in the application i.e. either from the institution of the suit in favour of the plaintiff or first appearance made by the parties. Therefore, Courts have the discretion of granting the maintenance from the date of filing the application and this contention of the husband has no merit. Indeed, there is no error of law in the view taken by the Trial Court in this regard, directing payment of the maintenance amounts from the date of the application.

21. As to the other ground that the wife was receiving `30,000/- every 15 days, and that this should have been considered (but was not considered) by the Trial Court, this Court notices that the argument is fallacious, because this aspect was duly considered by the Family Court. The amount given to the wife is meager and she is entitled to the amount to aid her to live in a lifestyle similar to that enjoyed in her matrimonial home. Also, the husband has not shown his true income and hence the wife is entitled to a much higher maintenance considering the status of his family. Likewise, the submission that the

wife did not aver the kind of lifestyle she led to persuade the Court to grant the maintenance it ultimately did is unmerited. In fact the parties had a love marriage and were living separately after marriage before the husband's parents decided to bring the parties to their house purely for their love and affection for their son and his family. Such being the undisputed fact, there cannot be two opinions that the lifestyle that the wife and the child were used to living was of a very affluent section of the society. This wife has mentioned in her application the kind of lifestyle and status which she enjoyed during her stay with the husband. The wife has also mentioned the kind of lifestyle she and her daughter were used to during her marriage. The husband's is a big business family and was ranked 167 in Super Rich list in 2010, and further she mentioned that she had a supervisor, cook, 3 helpers, two maids, one gardener, four drivers, one plumber and 24 hours security guards with Group 4 Security gun-man at her command. The house was equipped with various electronic gadgets. She has also mentioned the lifestyle to which her daughter was used to such as small swimming pool and swings installed in the house. To sum up their house contained all five-star facilities.

22. The submission of the husband that this Court should accept the determination for interim maintenance in the maintenance suit is no doubt attractive. By that order, the Court directed the husband to pay `75,000/- per month as maintenance. However, the Court had, at the same time, directed that the wife and child should be provided with a chauffeur-driven car, as well as provided a quantity of petrol and their health care needs be provided by the husband. Having regard to the

overall conspectus of circumstances, this Court is of the opinion that the determination of `1,25,000/- as maintenance by the Trial Court in this case does not suffer any infirmity. It is also a settled proposition that the highest amount determined as maintenance should be paid by the spouse required to do so.

23. This Court affirms the Family court's direction to pay maintenance amount at `1,25,000/- per month and `1,00,000/- as litigation expenses. The appeal is hereby dismissed. The costs of this appeal are hereby quantified at `55,000/-; they shall be borne by the appellant/husband. The Trial Court will ensure compliance with the present order. Appeal is consequently dismissed along with pending application but subject to the above directions.

**S. RAVINDRA BHAT
(JUDGE)**

**NAJMI WAZIRI
(JUDGE)**

DECEMBER 20, 2013