

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

Reserved on: 31.10.2013

Decided on: 21.11.2013

+ **MAT. APP. (F.C.) 24/2013, C.M. NO.12007/2013 & 12008/2013**

VISHAL KAPOOR Appellant
Through: Sh. Manish Tandon, Advocate.

versus

YASHNA KAPOOR Respondent
Through: Sh. S.K. Puri, Sr. Advocate with
Sh. Gaurav Puri, Ms. Gayatri Puri and Ms.
Kalpana Chauhan, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S. RAVINDRA BHAT

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C.M. NO. 12008/2013 (for condonation of delay)

For the reasons mentioned in the application, C.M. No. 12008/2013 is allowed.

MAT. APP. (F.C.) 24/2013, C.M. NO. 12007/2013 (for stay)

1. In this appeal under Section 19 of the Family Courts Act, the husband challenges an order of the Family Court directing him to pay maintenance *pendente lite* to the wife, Yashna Kapoor (hereafter “the wife”) during the course of divorce proceedings.

2. The facts are that the husband preferred a petition under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 (“the Act”) claiming

divorce, i.e. HMA 714/2011. Another petition, being HMA 679/12, was filed by the wife claiming decree of the dissolution of marriage against the husband under Section 13 (1) (i) & (ia) of the Act. With this petition the wife filed an application under Section 24 of the Act claiming maintenance for herself and her minor daughter. She also preferred an application for maintenance under Section 125 of the Code of Criminal Procedure (Cr.PC) for grant of maintenance, for herself and her minor daughter; an interim maintenance application was also filed.

3. The marriage between the parties was solemnized on 01.10.1995 according to Hindu rites. From the said wedlock a daughter was born, who is in the wife's custody. The wife levelled several allegations outlining insult by the husband and his family members for bringing insufficient dowry. She alleged that she was subject to constant and regular harassment; that she was abandoned and deserted by the husband, the sole earning member and was left to fend for herself and the daughter. The wife was forced to leave the matrimonial home on 16.02.2010. She is a housewife and has no independent source of income. Except one car, she does not have any movable or immovable property. The car was purchased on instalment basis, the initial deposit for the car was given by her father and instalments for it are being paid by her mother. The wife is totally dependant upon her parents for her day-to-day needs and of her daughter. Alleging that the husband is a man of means and receives rental income in respect of his property at Barakhamba Road of not less than ₹1,00,000/- per month, apart from his other sources of

income. The wife alleged that she and her daughter were entitled to a separate residence. She claimed that the husband be directed to pay ₹56,200/- per month to her and ₹39,500/- per month for the maintenance of their daughter.

4. The application was contested by the husband who denied all allegations of cruelty and alleged that the wife had no justifiable reason to desert him and that she filed the applications to extort money from him. He was paying the entire school fee of minor daughter; he was also paying a sum of ₹12,500/- per month towards the maintenance to the wife and their daughter. Further, when he was released on anticipatory bail (in regard to allegations of his committing offences punishable under Section 498A, IPC) he had also paid ₹2 lakhs to the wife towards her and the daughter's maintenance. Therefore, she is not entitled to any maintenance. He also alleged that the wife had herself withdrawn from the society of the husband without any cause. He, therefore, sought dismissal of the application for maintenance *pendente lite*.

5. The wife's income affidavit stated that she is educated up to the 12th grade and had completed a years' NTT course, baking and chocolate making programmes and a 30-day TATA AIG Insurance Training Programme. She had supplied lunches commercially in 2003 for a month when the parties were living together. She held a Fixed Deposit Receipt of ₹1 lakh. She has furniture, recovered from the husband as dowry articles. She has an I-10 Hyundai car. The initial amount was paid by her late father and the instalments are being paid by her mother. She has two bank accounts and an LIC policy in her

name which lapsed. She owns a cell phone and old household items. She has no shares in any companies, except to the extent that the husband made her the Director in some of his companies of which she has no knowledge. She pays ₹8,000/- as monthly school fees of her daughter and tuition fee as ₹4500/- She has a credit card with a maximum limit of ₹40000/- Her daughter is studying in K.R Mangalam School, Greater Kailash –II, New Delhi.

6. The affidavit of the husband stated that he completed B.Com from Delhi University, and is running Vastu Consultancy since 2008 besides having worked as a jewellery store manager. He had also designed jewellery books catalogues and was into trading and directory publishing. He also had modelled and acted as Assistant in Film/TV Serial; he was into the business of solar products trading, import and export. His mother and sister are dependent upon him. His father disowned him and his two younger brothers are living in their own accommodation and working. He earns monthly rent of ₹69,000/- from the property owned by the father and the rent has been provided to him for his sustenance. He did not receive rent for the last 15 months. He is receiving interest of ₹1500/- per annum on an FDR. He owns two plots on the Jaipur-Ajmer Highway. All his furniture was taken away by his wife, alongwith two female dogs. He owns a second hand car – 2000 model Hyundai Accent, and maintains a saving bank account as well as current account. He has 9500 shares of V.K. Solar Pvt. Ltd., Four life insurance policies and joint policies with the name of applicant/wife and owns SBI Mutual funds. He has taken credit card loan of ₹56,766/- from HDFC Bank and ₹74,998/-

from HSBC Bank and pays property tax of ₹2,40,540/- per annum. He has to pay ₹7000/- as rent and office rent charges of ₹6000/- and maintenance, electricity, water and gas charges of ₹3000/- per month. His conveyance expenditure is around ₹5000/- per month. He is a member of the Resort Company Club and its subscription is ₹4000/- per annum and his usage, subscription to newspapers, periodicals, magazines etc. are ₹700/- per month. He pays internet charges of ₹850/- per month. His expenditure on travel, including outstation and foreign travel, business as well as personal, are ₹2500/- per month. His mode of travel in city and outside city is metro, bus and auto-rickshaw and he last traveled in 2007 by Air India in economy class and stayed in a budget hotel. He has two credit cards and maximum credit limits are ₹39000/- and ₹54000/- respectively. He has membership of a South Delhi Club at Greater Kailash but now the club is closed. He has a PAN card.

7. The Trial Court recollected the relevant principles to be applied by Courts, outlined in *Sanjiv Sangwan v. Sangeeta Sangwan* 143 (2007) DLT 306; *Bharat Hegde v. Smt. Saroj Hegde*, 140 (2007) DLT 16 and *Jayant Bhargava v. Priya Bhargava* 181 (2011) DLT 602, i.e. status of parties; reasonable wants of the claimant; the independent income and property of the claimant; the number of dependents of the non-applicant whom he has to maintain; the amount should aid the applicant to live in a similar life style as he/she enjoyed in the matrimonial home; non applicant's liabilities, if any; provisions for food, clothing, education, medical attendance and treatment etc., of the applicant; payment capacity of the non-applicant. The Court also

stated that some guesswork is not ruled out while estimating the income of the non-applicant when all the source of correct sources are not disclosed and that the non-applicant would defray the cost of litigation.

8. The Trial Court then observed that the wife had placed on record material which revealed that the husband was possessed of means greater than what he had disclosed to the Court:

“10. (the wife has produced)..... ..visiting cards of the non-applicant/husband which shows that he is Chairman of the V.K. Solar and said firm runs its business at Chiaie and Hongkong also. He has also filed other photographs which shows that the non-applicant/husband is running a Astro Vastu Consultancy also. Non-applicant/husband in his affidavit husband has stated that he is paying rent of the office also which means that he is maintaining an office. Though he has stated that his Vastu business as well as business of V.K. Solar is in losses but still he is maintaining the office and paying rent for the same. He has stated that he has his mother and sister dependent upon him but at the same time in his affidavit he has stated that his father is still alive and therefore, it is the duty of his father to maintain his wife i.e. mother of the non-applicant/ husband and his daughter i.e. the sister of the non-applicant/husband. From the affidavit of non-applicant/husband it is clear that he has no other liability except to maintain the applicant/wife and their daughter. Again and again arguments have been put forth by counsel for the non-applicant/husband that the applicant/wife is working and is able to maintain herself but neither in the entire reply nor in his affidavit the non-applicant/husband has taken this plea. Nether he has stated what type of work applicant/wife is doing nor he has taken any such plea that applicant/wife is working or is able to maintain herself. Applicant/wife is maintaining the daughter of the

parties also who is school going and is presently about 17 years of age. From the reply as well as affidavit of non-applicant/husband it is clear that he has concealed his true income and status from the court. Reference can be had to the judgment of Hon'ble Supreme Court titled as Jasbir Kaur Sehgal Vs. District Judge, Dehradun and Others 1997(7) SCC 7.....”

9. Thereafter, the Court considered all the material on record and directed the husband to pay ₹15,000/- per month to the wife and ₹10,000/- to the daughter, towards their maintenance, from the date of the application. The Court also directed payment of litigation expenses.

10. It is argued by the husband, through his counsel, that the Family Court fell into grave error in concluding that the husband was possessed of considerable means. It was highlighted that the husband had not been receiving rent for long- a fact revealed to the Trial court itself. Counsel also submitted that the husband's business in solar equipment trading, as well as vastu consultancy is incurring losses and that the inferences drawn by the Trial Court about his alleged concealment are not borne out by the record. It was argued that the premises in Greater Kailash are used by the appellant for his business and he has to pay rent for it. Counsel relied on the documents produced before the Family Court, and contended that the amount directed to be paid is excessive and having regard to the limited and meagre amount that the husband is left with, after expenditure, the sum directed, i.e. ₹25,000/- cannot be termed reasonable.

11. Learned counsel for the wife, on the other hand, argued that the

Income tax documents in the form of income and expenditure account, asset statements, etc. clearly revealed that there was nothing wrong in the Family Court's assessment of the husband true income. It was argued that the impugned order is neither incorrect in law, nor does it omit any material fact or circumstance. In these circumstances, there is no occasion for the Court to interfere with the findings of the Trial Court.

12. The material on record reveal that the individual income tax returns of the Appellant for the year 2011-2012 showed a rental income of ₹8,56,577/- of which he claimed standard deduction permissible, i.e. 30%. This meant that the real rental income was over ₹71,000/- per annum. For M/s V.K. Solar, the total sales disclosed during the year ending 31.03.2011 was ₹3,82,810/-. Interestingly, a deduction of ₹95,000/- has been shown towards salary; telephone and internet expenses for the year are ₹37,436/-; the rent has been shown at ₹36,000/-. It is a matter of record that the Greater Kailash premises were gifted to the appellant by his father. M/s Vastu Benefit earned an income of ₹1,54,050/- during the same period. Of this, the sum of ₹35,942/- was towards car expenses; ₹22,824/- towards website charges, ₹26,307/- towards general expenses and ₹68,497/- towards depreciation. The appellant showed two properties as owned by him – being two plots of land on the Jaipur-Ajmer Highway for which he has paid ₹18.75 lakhs. These were revealed in his affidavit; concededly he owns a commercial property which fetches about ₹71,000/- as monthly rent, and also owns premises in Greater Kailash-I, New Delhi, a residential locality generally regarded as posh. All

these clearly point to his being economically sound and quite well off. As against this, the wife has revealed that she owns a car, the instalment payments for which are undertaken by her mother. She has no source of income and is not working. Her needs and that of her child have to be taken into account. She is at the moment, entirely dependent upon her parents for her maintenance, defraying of day-to-day expenses and the expenditure incurred by her for the upbringing of a growing child, i.e. educational, health, recreational and other needs.

13. In *Jayant Bhargava (supra)* the Supreme Court held that though there cannot be an exhaustive list of factors to be considered in guessing the true income of the spouse, an order based on guesswork should not be arbitrary or fanciful. Whenever it is necessary to guess the income of the spouse, if the source of income are either not disclosed or not correctly disclosed, the Court can taken into consideration some relevant factors such as:

- “(i) *Life style of the spouse.*
- (ii) The amount spent at the time marriage and the manner in which marriage was performed.*
- (iii) Destination of honeymoon.*
- (iv) Ownership of motor vehicles.*
- (v) Household facilities.*
- (vi) Facility of driver, cook, other help*
- (vii) Credit cards*
- (viii) Bank account details*
- (ix) Club Membership*
- (x) Amount of insurance premium paid*
- (xi) Property or properties purchases;*
- (xii) Rent Income*
- (xiii) Amount of rent paid*

- (xiv) Amount spend on travel/ holiday
- (xv) Locality of residence.
- (xvi) Number of mobile phones
- (xvii) Qualification of spouse
- (xviii) School (s) where the child or children are studying when parties are residing together.
- (xix) Amount spent on fees and other expenses incurred
- (xx) Amount spent on extra curricular activities of children when parties were residing together.”

In *Jayant Bhargava v. Priya Bhargava*, 181 (2011) DLT 603, this Court, based on the decision of the Supreme Court in *Jasbir Kaur Sehgal (Smt.) v. District Judge, Dehradun and Ors.*, (1997) 7 SCC 7 observed as follows:

"12. 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."

14. In the present case, the appellant's admissions reveal that he owns a commercial flat at Barakhamba Road; even after payment of the annual property tax paid, the rental amount would be substantial. He has three sources of income; though he claims that the two businesses are incurring losses, the nature of expenditure incurred in those businesses, coupled with the earnings by him, are revealing.

There is no denial to the fact that he is the beneficiary of a gift of property by his father, of a Greater Kailash-I property. He uses credit cards; the petrol and depreciation expenses claimed in balance sheets are in the range of about ₹1,00,000/-; he also has shown salary expenditure to the extent of ₹95,000/-. It is recognized by Indian Courts that parties are not always candid in revealing their true income; especially in the context of matrimonial disputes, where when discord arises, and legal proceedings are anticipated or initiated, efforts are made by spouses to underplay their earnings. From all his earnings (primarily through rental income as then assessed) he has no liability towards any of his parents or siblings. Therefore, all the monies at his disposal would be for himself and his duty towards maintenance of his wife and their daughter. That the minor daughter is studying and her growing needs are to be taken care of are undeniable; equally the wife's right to maintenance, under the circumstances cannot be disputed. The husband has not shown that she is possessed of any known and steady source of income. Having regard to the overall conspectus of circumstances, and in the light of the above discussion, this Court is of the opinion that the Trial Court's determination that the applicant/wife should be granted interim maintenance @ ₹15000/- per month and minor daughter (Sagarika Kapur) is entitled to ₹10,000/- per month from the date of filing of the applications till the disposal of the case on merits or till they are legally entitled to receive the same does not call for interference. The husband is directed to clear all arrears of maintenance within four weeks from today in equal installments and to furnish the monthly

maintenance after the date of orders by way of money order or by deposit in the bank account of the wife on her furnishing the account number of the same, by or before 10th date of each English calendar month. The default shall be viewed in terms of the Trial Court's order, i.e. the consequences spelt out by judgment of this Court in *Gaurav Sondhi v. Diya Sondhi* 120 (2005) DLT 426. Furthermore, in accordance with settled law, the respondents would be entitled to the maintenance of the highest amount among the various allowances awarded, if any to them by various courts. The present appeal and pending application are dismissed, in the above terms.

**S. RAVINDRA BHAT
(JUDGE)**

**NAJMI WAZIRI
(JUDGE)**

NOVEMBER 21, 2013