

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

Reserved on: 10.10.2013

Pronounced on: 28.10.2013

MAT. APPL.(F.C.) 31/2013

SMT. ANUSHA TRIPATHI Appellant
Through : Sh. Vikas. K. Bharti, Advocate.

VERSUS

SH. DEJASVEE SHASTRI Respondent
Through : Ms. Poonam Mahajan, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BIAT
HON'BLE MR. JUSTICE NAJIM WAZIRI

MR. JUSTICE S. RAVINDRA BIAT

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1. This is a wife's appeal under Section 19 of the Family Courts Act, 1984 seeking to enhance maintenance *pendente lite* awarded by the Trial Court by the impugned order dated 27.07.2013 for the appellant and her minor daughter.

2. The appellant and respondent got married on 12.05.2009 at Indore and started living together along with the respondent's parents. Within 9 months of the marriage, the respondent got a job as vice-

President of Deutsche Bank and the couple moved to Jaipur, where the appellant delivered a baby girl named "Saisha" on 21.09.2010. On 25.10.2010, the appellant with her minor daughter and brother came to Delhi to meet her parents. The respondent met her only twice during her stay in Delhi, and refused to visit her parent's residence the second time, meeting her at a hotel instead in December 2010. Thereafter, several attempts to meet the respondent were made by the appellant but were refused/ignored by the respondent. She took up a job in M/s. Sapient at Gurgaon to support herself and her daughter. On 25.08.2011, the respondent told her of a divorce petition he had filed against her in the Family Court at Jaipur, of which the first hearing was on the same date. The appellant made attempts to communicate with the respondent but was unsuccessful. She filed a complaint at Police Station, Shyam Nagar on 27.08.2011 but was forced to return to Delhi since no action was taken, and is staying here till date. She then filed a transfer petition before the Supreme Court, resulting in the divorce petition being transferred to Family Court, Delhi.

3. On 03.05.2013, the appellant filed a detailed written statement to the petition along with an application under Section 24 of the Hindu Marriage Act, 1955 for grant of maintenance and *pendente-lite* claiming for monthly maintenance of ₹2,00,000/- for both herself and her minor daughter and ₹1,00,000/- towards litigation expenses.

4. The Trial Court heard the maintenance application and oral arguments and allowed the application by order dated 27.07.2013,

granting maintenance of ₹25,000/- per month each to the appellant and her daughter. The order specified that the respondent would pay ₹25,000/- per month to his daughter till she gets married. Being aggrieved by the said order, the appellant has approached this Court for enhancement of maintenance.

5. The Trial Court found that the parties belonged to upper middle class families. As per income tax returns for 2012-2013 filed before this Court, the take-home salary of the appellant was ₹49,982/- per month. The take-home salary of the respondent, on the other hand, is ₹2,76,475/- per month, over five times that of the appellant. It was wrongly calculated to be ₹3,83,000/- per month by the Trial Court.

6. It is argued by the appellant that the amount awarded by the Trial Court is, under the circumstances, and having regard to the materials on record, grossly inadequate. Counsel submitted that having determined that the respondent was earning over ₹3.8 lakhs per month, the Court should not have awarded only ₹50,000/- to the appellant and the child. That amount had no co-relation to the earning and bore no proportion or connection with the respondent's income. In fact, the impugned judgment does not disclose any reasoning in that regard.

7. Counsel for the respondent argued that the amount awarded by the Trial Court is fair and reasonable. It was argued that the respondent wife is not only qualified but capable of earning a handsome salary. Furthermore, the respondent is possessed of

substantial means in the form of bank deposit, which yield over ₹50,000/- per month. Reliance was placed upon the Income Tax Returns which were part of the record of the Trial Court.

8. The factors to be taken into account when hearing applications under Section 24 of the Hindu Maintenance and Adoption Act were set out in *Sh. Bharat Hegde v. Smt. Saroj Hegde*, 140 (2007) DLT 16, I (2007) DMC 815. They are as follows:

- (a) Status of the parties
- (b) Reasonable wants of the claimant
- (c) The independent income and property of the claimant
- (d) The amount should aid the applicant to live in a similar life style as he/she enjoyed in the matrimonial home.
- (e) Non-applicant's liabilities, if any.
- (f) Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant; particularly of the child who will need to start going to playschool soon.
- (g) Payment capacity of the non-applicant.
- (h) Some guess work is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.

9. It is settled law that applicants in a maintenance proceeding under Section 24 are entitled to the same standard of living as they

would have enjoyed if the dispute had not occurred. His father being well-qualified and comfortably retired for the last few years with his wife, the respondent has no other liabilities except to maintain his daughter and wife. His child is now 3 years old and as such requires a great deal of care. As the appellant has averred, she will need to start going to pre-school soon. The respondent's affidavit disclosing income and assets would reveal that according to the income tax returns, his annual salary is ₹46 lakhs; of that ₹12 lakh is deducted towards income tax. The appellant is left with ₹34 lakhs. This works out roughly to about ₹2.7 lakhs per month. As against this, the award of a total sum of ₹50,000/- is inadequate; it bears only a fraction (20%) to the net monthly income of the appellant. As between the two spouses, the husband is undeniably better placed financially.

10. In view of the clear capacity of the respondent to provide a good standard of living commensurate with his salary to his wife and child during the pendency of the proceedings, there is no reason the maintenance amount should not be enhanced.

11. We are of the view that the plea to enhance the maintenance amount is legitimate and accordingly direct the maintenance amount to be increased to ₹50,000/- per month each for the appellant, and for her daughter (i.e a total amount of ₹1,00,000/-). This would leave the respondent with ₹1,76,475/- per month, which ought to be more than adequate for him to maintain his standard of living as well. The amount payable towards litigation expenses should also be increased, to ₹25,000 *in toto*. The appeal is thus allowed, partly in the above

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OCTOBER 28, 2013

NAJMI WAZIRI
(JUDGE)



S. RAVINDRA BHAT
(JUDGE)



terms; the other conditions imposed in the impugned order are left
undisturbed.