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

RESERVED ON: 07.11.2013

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PRONOUNCED ON: 10.12.2013

MAT.APP. (F.C.) 40/2013, CM APPL.15485,
15486, 15487 & 15488/2013

PRITAM ASHOK SADAPHULE

..... Appellant

Through: Ms. Geeta Luthra, Sr. Advocate with
Mr. Rakesh Taneja, Ms. Naina Dubey and Ms.
Priyanka Ashok, Advocates.

versus

HIIMA CHUGH

..... Respondent

Through: Mr. Anirudh K. Mudgal, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S.RAVINDRA BHAT

1. This is a husband's appeal impugning an order of maintenance *pendente lite* made by the Family Court in the course of divorce proceedings initiated by the wife.
2. The marriage of the couple was solemnized on 05.03.2005 in Delhi in accordance with Hindu rites and ceremonies. After the divorce proceedings were filed, the wife applied under Section 24 of the Hindu Marriage Act ("*the Act*") claiming maintenance *pendente lite* and litigation expenses.

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3. In those proceedings, the wife alleged that the husband carried on several businesses, i.e. (i) IT Quest Consultants UK Ltd registered in UK; (ii) IT Quest Inc registered in USA; (iii) IT Quest Consultants Private Limited registered in Mumbai; (iv) Pritam Software Solutions Private Ltd is also registered in Mumbai. It was further alleged that the husband was also a partner in other firms i.e. IT Quest Consultants, M/s. Pritam Computers and a Travel Agency in Mumbai. She alleged that he lived luxuriously, owned a Mercedes Benz, E-class and various properties (Flat No. G-1 Building No. 48, Tilak Indrayani Society, Tilak Nagar Chembur Mumbai), and was in the habit of staying in five star hotels during his tours in India and even while in UK. The husband, also, allegedly spent huge rental amounts for his employees and at one given point of time from his company IT Quest Consultants UK Ltd., he was paying salary for more than 23 people. Further, he hires theirs and others' services out to various Blue Chip/Satrod Multinational companies spread over the UK and the USA. She also stated that the husband travelled extensively to different countries, both on business and for pleasure and that he was extremely extravagant and has several credit cards of various banks; is an account holder in more than 10 to 12 banks such as HDFC Bank, ICICI bank, Abhudaya Cooperative Bank Ltd, Standard Chartered, HSBC Lord Krishna Bank, KotaK Mahindra Bank, Axis Bank, ICIC Bank UK HSBC UK Bank of America etc.

4. It was alleged by the wife that the husband earned over £ 30,000/- per month as profits from IT Quest Consultants UK Ltd, apart from

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income from USA in India and gets £ 1,000/- pounds profit per month for each candidate he employs/lets out on contract to various companies. She alleged that the husband paid over ₹1,00,000/- to dine with Mr. Sachin Tendulkar in Mumbai 2010. She was compelled to leave her last job at Ubique Systems UK Ltd., at the end of July 2005 where she was earning approximately £ 7000 pounds per month since she was forced to become a Director in the company carrying out the same business which Ubique System was engaged in because her husband did not have a permanent residence status in UK, and could not himself carry on business in UK, wanting his wife instead to run the business for him. It was in these circumstances, the wife claims, that she became a director of IT Quest Consultants UK Ltd on 18.8.2005. Subsequently, it is alleged that he exploited her and misappropriated funds from her. It was alleged that the husband transferred funds from the wife's bank accounts on the internet to the tune of £ 7333, out of a total £ 8020. Out of this, he transferred £2500 to his personal bank account and £4833 GBP into the account of his company IT Quest Consultants UK Ltd.

5. The applicant wife contended that there was a lack of job opportunities in the field of her expertise in India due to which she has been unable to secure employment on returning to India. She claims to have prayed for maintenance to achieve the same standard which she enjoyed while living with the husband and has thus claimed Rupees 3 lakh per month as maintenance *pendent lite* and ₹ 1,51,000/- as litigation expenses. The wife affirmed an affidavit stating that she

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did not own any movable or immovable property in India. She had mentioned to having taken a house on a 99 years lease in London in June 2007 by taking a loan for the entire consideration of £2,48,000/- which was arranged by mortgaging the house and taking a loan of 52% of the total consideration from Leeds Building Society and the balance 48% was arranged by her by taking a loan from Metropolitan House Ownership. She stated that she could repay £24,807.98 of the loan amount in installments till September 2009 and remaining £2,47,659.40 is still due from her. Due to non-payment of the outstanding amounts, the interest rate on such installments as well as punitive interest is mounting. She also admitted to being account holder in two banks i.e. with HSBC Bank, UK and ICICI Bank, UK. The total outstanding to her credit is about £1000/- in the two accounts combined. She has stated that she does not own or maintain any vehicle car or scooter.

6. The husband denied the application for maintenance. His reply was supported by an affidavit, affirmed on 11.11.2011 in London. His preliminary objection resisting the application was on the ground of a divorce decree dated 22.09.2011 of IP Ford Country Card in UK having become final in his favour. He had challenged in this Court an order refusing to recognize the said foreign decree. Notice has been issued to the wife; and he sought for *sine die* adjournment of the divorce petition. He alleged that the wife had deposed on affidavit before the Brn Ford Country Card in UK about her owning a property bearing No. 112 Axiom Apartments, Mercury Garden

Romford RMI 3 HJ in the UK. He also mentioned that the wife owns a commercial property worth ₹ 50,00,000/- at Nehru Place in New Delhi wherefrom she is getting ₹ 30,000/- per month as rental and she is also getting jobseekers allowances and living allowances from UK Government and under the UK laws, the respondent is prevented from having access to such information as the petitioner is an MS in computers and has income from Bonds, Mutual Funds and Shares and she obtained tax refund cheque on 18.07.2011.

7. The husband is B.E. (Bachelor in Engineering) in computer engineering in software and his monthly income is \$1000 per month all of which is spent on house rent (standard accommodation \$500, food \$200, T.V. Internet, Phone & Miscellaneous expenses on work and personal \$ 200 on medical and miscellaneous pocket expenses \$100). He admitted having visited USA, Australia, Maldives, Caribbean island, Switzerland for pleasure and added that such visits were with the wife. However, he denied holding 12 bank accounts except in HDFC and Abhudaya Bank in India which were dormant. He denied earning of \$30,000 per month and using petitioner's internet banking passwords etc.
8. The applicant/wife responded in a rejoinder that the Nehru Place property was sold for ₹19,24,000/- which she claimed was due to financial constraints. She further claims that out of the sale amount she purchased bonds worth ₹4,40,000/-. She denied receipt of any benefit after non molestation order in UK Court where she was provided counsel by the state and she was also being given weekly

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allowance. As regards tax refund the wife accounted it to rental from Nehru Place property before its alienation. Regarding allegations of her possessing shares and drawing income, the wife urged that she bought shares worth ₹4.75 lakhs as on 01.12.2011 while working in UK, and that these shares were purchased with her own earning before arrival of the husband in her life and that other investments by her worth ₹2.9 lakhs were in the form of systematic investment plans. She alleged that the following companies were owned and controlled by the respondent: (i) IT Quest Ltd (incorporated in UK on 25.07.2011), (ii) IT Quest Consultants (UK) (incorporated in UK), (iii) IT Quest Consultants UK Ltd, (incorporated in UK on 13.01.2010, (iv) Etude Ltd., (incorporated in UK 26.10.2011), (v) Iquery consult Ltd. (this company was incorporated on 22.02.2011, however as on date the said company stands dissolved on 22.11.2011), (vi) IT Quest inc. (incorporated in USA), (vii) Pritam Software solutions Pvt. Ltd., (incorporated in India), (viii) IT Quest Consultant a partnership firm Pritam Software, (ix) IT Quest consultant (partnership Firm). The wife also produced copies of certificate of incorporation of all companies of the husband except at (ix) above and other relevant documents.

9. The husband filed an additional affidavit dated 04.01.2012 (reference page 1023, Part III of the file) annexing the electronic official copy of register of information dated 28.12.2011 with regard to UK property in the name of petitioner in the official record there and expressed that she might be earning substantial rental income from the property, the

official worth of which is \$2,46,333 as on 06.07.2007. He also furnished details of four bank accounts of the wife of which he knew during their cohabitation. In his additional affidavit dated 14.12.2012, the husband alleged that the current rental value of the UK property in the name of the wife is \$1250 per month and she is saving/earning \$350 per month (INR 27,000) after settlement of repayment of mortgage with interest as in the mortgage statement dated 01.01.2009. The mortgage repayment payable per month is only \$860. The husband also claimed that wife was earning \$2500 per month as a director, which was credited in her bank account by company IT Quest and he relied upon the true copies of bank statements of the petitioner in this regard. These related to the period January, February and March, 2009. He denied having started or being a Director of IT Quest Consultant UK Limited as claimed by the wife and affirmed that he had taken legal steps to counter the corporate fraud. He claims that IT Consultants Pvt. Ltd., in India is incurring losses, which in the last year was ₹9,12,962/- . He also relies on copies of the latest income tax returns. As regards Pritam Software Solutions Private Ltd., the husband claimed that it was closed by a Board resolution dated 13.09.2011. The husband lastly urged that the wife was securing £2000 towards unemployment benefits.

10. The husband filed, on 28.03.2012 yet another affidavit dated 21.03.2012 sworn in a UK where he gave the financial health of the companies in which he was involved as follows :

(i) IT Quest Limited (Company No. 07715703) incorporated in UK on 25.07.2011 – not doing any business since inception so balance sheet account not available and there is no remuneration Director.

(ii) IT Quest Consultant UK Ltd., (Company No. 5210706): Petitioner was also a Director till August 2007 balance sheet with remuneration of Director for last three years attached at Annexure R2 (reference Page 1093 to 1155/ Part II of the file) respondent claims that company is currently incurring loss of \$7540/-.

(iii) IT Quest Consultants UK Limited (Company No.07715757): Company is not doing any business since its incorporation on 25.07.2011, so no remuneration to the respondent as a Director paid and dormant declaration has been filed in UK office tax) which is at Annexure R3 (reference page 1157 part II of the file)

(iv) Etude Ltd., (Company No.07823736): Company not doing business since incorporation in UK on 25.10.2011 and there is no remuneration to respondent as Director and even company has no bank accountant Respondent claimed that he floated his company to help his friend.

(v) Iquery Consult Ltd., (Company No. 07539011) incorporated on 22.2.2011 and closed on 22.11.2011 and there being no such business. There is no balance sheet available. As per the respondent originally IT Quest Consultant UK Ltd., was formed by fraud people which respondent got closed by writing to the registrars of Companies of UK

(vi) IT Quest Inc Incorporation in USA) account of 2008 and 2011 only are available and filed a Annexure R4 (reference page 1159 to 1213 part III of the file) Company has no employees, no business no remuneration for Directors. It is in loss of \$ 2000 in 2010 and files of 2009 allegedly deleted by petitioner from respondent's file.

(vii) Pritam Software Solutions Pvt. Ltd, incorporated in 2009 in India. No remuneration is provided for Directors and balance sheet as on 31.03.2010 is a page 1131 part III of the file. There is Board of Directors resolution dated 13.09.2011 to wound up the company.

Year	Turnover	Net Profit/ Loss	Director Remuneration
Aug. 2008 – Aug. 2009	\$91671	\$4216	\$18500
Aug. 2009 – Aug. 2010	127805	4580	35000
Aug. 2010 – Aug. 2011	116790	7540	12000

11. During the course of arguments the wife moved an application under Section 151, Code of Civil Procedure (“CPC”) seeking to bring on record certain facts and additional documents. She *inter alia* averred that the UK property is under threat and re-possession as she is unable to pay the legal dues to her lenders in UK who wrote her that due to non-payment of dues bank shall initiate appropriate legal proceedings (summons for possession) against her. She has also annexed relevant documents of sale of Nehru Place property for ₹19,24,000/-, and has also placed on record copy of order of this Court in CRP 148/2011 (date of decision: 22.04.2013) by which the revision petition of the husband challenging the order dated 22.09.2011 of Trial court was dismissed. The Trial court had dismissed the application of the respondent/husband under Section 13, CPC by an order dated 22.09.2011.

Trial Court observations and conclusions.

12. The Family court was of opinion that both parties did not on their own reveal their correct financial status which was revealed after they were confronted about their financial position. The Court noticed that even though the husband claimed to have only £ 1000 per month as income, he had travelled on pleasure trips and he

“failed to explain how he could travel extensively to USA, Australia, Switzerland etc. with meager income. Admittedly he has also extended financial help to his friend by floating Etude Ltd., Co., as mentioned at para 10 (iv) above. From the allegations and counter allegations with regard to veracity of document filed by both the parties to convince that their respective version is trustworthy and rival version is wrong since at this stage court has only to take a prima facie view and is not to adjudge the case of the parties on the basis of respective documents as it is conducting a trial as their respective relied documents have been challenged by each other, I am proceeding to dispose of the application in the backdrop of given facts and circumstances and relevant provision of law petitioner is admittedly living in Delhi. She has not given the details of her probable expenses under different heads like food, clothing shelter medicines and other miscellaneous expenses etc., she herself is a professional and had been earning handsomely in UK as per her, there is no job opportunities in India in her field of expertise as such she is unable to secure any job. On the other hand respondent has portrayed a grim picture of his financial position which appears to be not true when viewed against his living standard. Both the parties have also not placed on record their bank statements of different bank, accounts. In such circumstances a guess work is required to be made. Respondent has/had floated a number of companies which he claims are turning in losses/closed. Even floating of company requires expenses. Petitioner has claimed income of respondent as 30, 000 per

month which has been denied by its respondent. The claim of respondents income being 1000 per month is also not believable. On guess work income of the respondent is construed to be not less than 5000 per month whereas income of petitioner is construed as nil in India as on date.

17. Keeping in view the expenses of respondent in UK and standard of living of parties in UK and the competency and capability of petitioner to earn in India and of the fact that petitioner is presently living in India and has to spend in Rupee in my considered view of Rs.75000/- per month is sufficient as pendent lite maintenance w.e.f case of application i.e. 05.02.2011 it is ordered accordingly Rs.50,000/- is awarded as litigation expenses. The arrear be cleared within six months and the monthly payment be made by 10th of every consecutive months."

13. It is urged on behalf of the appellant that the Trial Court fell into error in holding that the husband did not earn more than £1000 per month. It is argued that the affidavit and the notary's certificate conclusively established that the financial health of the United Kingdom companies was precarious. In these circumstances, it is argued that the Court should not have disbelieved the documents and concluded that the husband was earning more than £1000 per month. Learned counsel also relied upon the income tax and balance sheet of profit and loss statements for the years, 2009-10, 2010-11 and 2011-2012 in respect of the Indian companies in which the husband had controlling interest, i.e., I.T. Quest Consultants Ltd., Pritam Associates, Pritam Software Solutions Pvt. Ltd and the overseas company, i.e., I.T. Quest Consultants (UK) Ltd. and I.T. Quest Inc. It was submitted that upon an overall reading and consideration of these documents, there cannot be any doubt as to whether the husband possesses substantial means.

The answer is clearly in the negative. All the business concerns in question are incurring losses. In view of these facts, the findings rendered in the impugned order and the directions to pay ₹75,000/- per month as maintenance to the respondent/wife is clearly erroneous.

14. It was urged next that the marriage between the parties was dissolved by the Illford County Court in UK on 9.5.2011. This fact was brought to the notice of the concerned Court hearing the proceedings. However, that was not given due weight. Learned counsel submitted that the respondent/wife's knowledge of these proceedings and the divorce decree and the further circumstance that the said decree has become final precluded her from claiming any amount under Section 24 of the Hindu Marriage Act. This was for the reason that there was no subsisting marriage between the parties as on the date of the application.

15. It was next argued that the respondent/wife suppressed several material facts which stopped her from claiming any amount towards maintenance. In this regard, it was urged that the wife was the recipient of a monthly allowance towards unemployment from the U.K. Government. Furthermore, the respondent/wife owned immovable property in England of considerable value. These facts and the circumstance that she disposed of a commercial flat in Delhi and did not mention about this in the Section 24 application, clearly debarred her from claiming any relief.

16. Learned counsel argued that the Trial Court misdirected itself into belief that the husband was leading a luxurious and lavish lifestyle and had access to considerable wealth and income. It was submitted

that each of the materials placed on the record established that contrary to the wife's assertions, the husband was barely able to manage his business. In the absence of any material, therefore, the Trial Court proceeded to direct payment of considerable maintenance - to the tune of ₹75,000/- per month -- and accordingly, this clearly requires to be set aside.

17. Counsel for the wife, on the other hand, contended that the Family Court correctly appreciated the law applicable and arrived at the right conclusions in the facts and circumstances of the case. It was submitted that there was no suppression of facts; the wife disclosed all her assets, the nature of encumbrances, as well as the amount received for sale of the Nehru Place property. It was submitted that the argument regarding the wife being recipient of unemployment allowance from the UK Government is baseless and the appellant did not place any material on the record.

18. It was submitted that a fair reading of the documents and materials clearly reveals that the husband had several sources of income, and was attempting to suppress his real earnings, in order to avoid paying proper maintenance. It was submitted in this context that the submission that the UK companies in which the husband had control were financially unsound or were incurring losses cannot be believed. It was argued that the husband frequently travels internationally; he not only controls businesses in UK, but also in India. A close scrutiny of the income and expenditure statement of each of them reveal that considerable expenses are being borne by those enterprises, which betrays the submission of the appellant's lack of resources.

19. In the present case, the couple met each other in the UK and later got married in New Delhi on 04.03.2005. They then started living in the UK thereafter. The wife secured permanent resident status in that country in July, 2005 and also started to work there. The wife complained of domestic violence against the husband in 2009, but after investigations, no proceedings were initiated against the husband. In the meanwhile, the wife had acquired immovable property, a flat at Romford. The wife apparently lodged criminal complaints against the husband in Mumbai in 2010. In these circumstances, the husband claims to have filed proceedings for divorce in the Ilford County Court in which the wife is alleged to have been served. Later, the wife initiated a suit for permanent injunction (OS 2610/2010) for permanent injunction against the husband from pursuing with the UK divorce case. She later filed a petition under Section 13(ia) of the Hindu Marriage Act for dissolution of marriage, on the ground of cruelty against the husband, in 2011.
20. This Court first proposes to deal with a preliminary argument made on behalf of the appellant, i.e. that the Ilford County divorce proceedings resulted in a decree *nisi* on 9th May, 2011 which is binding upon the parties and that this court should recognize it. Counsel stressed upon the provision in Section 13, Code of Civil Procedure and stated that it embodies the principle of *res judicata* as regards final determinations and findings rendered by foreign courts, which bind and enjoin parties from agitating the same cause before Indian Courts. This court holds the argument to be unpersuasive. This

ground, it may be noticed, was urged before the Family Court in the pending divorce proceedings, by way of an application on behalf of the husband, who sought for dropping of the proceedings in the petition, urging that Section 13 and the principle underlying it, should preclude the court from entertaining the divorce petition. That objection, in the form of an application, was rejected by the Family Court's judgment dated 22.09.2011. The husband instituted a revision petition (CRP 148/2011) against that order. A learned single judge of this Court by reasoned order of 22.04.2013 rejected the revision petition. The matter does not stop here; the husband unsuccessfully carried the order in appeal by special leave to the Supreme Court (SLP 25871/2013) which was dismissed by the Supreme Court on 26.08.2013. There is no change in the circumstances, the facts or the legal position for this Court to revisit the same plea at another stage of the same proceedings. The argument is not only misplaced, but even amounts to willful abuse of the judicial process. The court notices in this context, that the husband had not placed on record the various orders of the Family Court and of this court on the question; it was only in the course of the proceedings, after the attention was drawn to Counsel that copies of those orders were brought on record. The intention was clear, and an attempt to mislead the court without disclosing the previous orders was made.

21. On the merits, this court notices that though the wife's affidavit did not conform to the format required to be followed in judgments of this Court, it contained essential particulars with regard to her having

taken a house on a 99 years lease in London in 2007 for £2,48,000/- funded by mortgage of the property to the extent of 52% from Leeds Building Society and the balance 48% through a loan from Metropolitan House Ownership. She could repay £24,807.98 of the loan amount in installments till September 2009 and defaulted the £2,47,659.40 which has resulted in escalated liabilities and punitive interest. She holds accounts in two banks i.e with HSBC Bank, UK and the other, ICICI Bank UK. The total outstanding to her credit is about £ 1000/- in the two accounts combined. She does not own or maintain any vehicle car or scooter. She also revealed in her affidavit about having disposed of a commercial flat at Nehru Place for Rs. 19 odd lakhs, and having invested part of it in securities. The husband alleged that the wife is possessed of means and is capable of earning for herself. He also alleged that she indulged in suppression of facts in that she is actually a recipient of unemployment allowance from the UK Government. However, there is no substantiation of these allegations. Furthermore, that the wife is not employed presently has not been disputed by the husband.

22. As far as the assessment or evaluation of the husband's income goes, a look at the Trial Court's impugned judgment would reveal that all the materials and circumstances were duly taken into consideration. Undoubtedly, the husband's companies have been reporting losses. However, the income tax returns in respect of IT Quest Consultants (Pvt) Ltd show that for 2010-2011, the software consultancy income was Rupees 4.83 lakhs; the Director's remuneration paid was

₹3,55,000/-. IT Quest Consultants (UK) Ltd, for the same period showed that Director's earnings were UK £ 35,000/- and sundry expenses were £87,000/-. The income and expenditure statements of other concerns, such as Pritam Software, the US company, consistently show that the husband reported losses. However, at the same time, the husband is able to sustain himself and live abroad; he even carries on business in three different countries, by incurring some expenditure. In these circumstances, the Court would not be remiss in assuming that he is less forthcoming in his affidavits and responses about income earning abilities as well as truly accounting the resources he owns or has access to. The Family Court, in these circumstances held that the wife was entitled to monthly maintenance of ₹75,000/-.

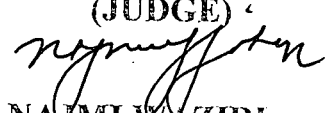
23. In *Jasbir Kaur Sehgal (Smt.) v. District Judge, Dehradun & Ors.*, (1997) 7 SCC 484, the Supreme Court observed as follows:

"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.

... The discretion of the court would depend upon multiple circumstances which are to be kept in view. These could be the time taken to serve the respondent in the petition; the date of filing of the application under Section 24 of the Act; conduct of

the parties in the proceedings; averments made in the application and the reply thereto; the tendency of the wife to inflate the income out of all proportion and that of the husband to suppress the same; and the like..."

24. Courts have also recognized that income tax returns are inconclusive in determining award of maintenance in matrimonial proceedings. (see *Vinod Dulerai Mehta v. Kanak Vinod Mehta*, AIR 1999 Bom 120). In *Smt. Renu Jain v. Mahavir Prashad Jain* AIR 1987 Del 43). In the present case, though the husband has reported losses in his business venture, at the same time, the director's report, and income tax statement of income and expenditure reveal that Director's remuneration has been shown in the companies in which he has a controlling interest. The business in most of these concerns appears to be proceeding; the appellant has not filed for bankruptcy or insolvency. Having regard to all these factors, the Court is of opinion that the limited role it has to play in an appeal over the determination of maintenance *pendente lite* amounts in this instance cannot be termed as unreasonable or untenable.
25. In view of the above discussion, it is held that the appeal lacks in merit. It is accordingly dismissed without any order on costs.


S. RAVINDRA BHAT
(JUDGE)

NASMI WAZIRI
(JUDGE)

DECEMBER 10, 2013