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

% ***Date of decision: 11th October, 2023***

+ **MAT.APP.(F.C.) 301/2023**

HARSHITA G GANDHI Appellant

Through: Ms. Ruchi Munja, Ms. Smriti, Mr. Prashant Singh, Mr. Aakash Yadav & Mr. Amolak, Advocates.

versus

NIMIT GANDHI Respondent

Through: Mr. Sunil Mittal, Sr. Advocate with Ms. Seema Sethi, Advocate.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CM APPL. 52974/2023 (Exemption)

1. Allowed, subject to all just exceptions.
2. The present application is disposed of.

CM APPL. 52975/2023 (Condonation of delay)

3. The present Application under Section 5 of the Limitation Act, 1963 read with Section 151 of the Code of Civil Procedure, 1908 has been filed on behalf of the applicant/appellant seeking condonation of 28 days' delay in filing the present appeal.
4. For the reasons and grounds stated in the present application, the application is allowed, the delay of 28 days in filing the present appeal is



hereby condoned.

5. Accordingly, the present application is disposed of.

MAT.APP.(F.C.) 301/2023

6. The present Appeal under Section 19 of the Family Courts Act, 1984 read with Section 28 of the Hindu Marriage Act, 1955 (*hereinafter referred to as "HMA, 1955"*) has been filed on behalf of the appellant/wife against the Order dated 28.07.2023 passed by the learned Judge, Family Court, South District, Saket Courts, New Delhi, whereby the Application under Section 24 of the HMA, 1955 filed by the appellant/wife was allowed thereby granting her interim *pendente lite* maintenance of Rs. 25,000/- per month.

7. The parties got married on 06.12.2019 according to the Hindu rites and customs and they separated on 13.10.2020 i.e., within 10 months and 7 days. The differences cropped up between the parties leading to filing of the Petition bearing HMA No. 1070/2023 under Section 13(1)(ia) of HMA, 1955 by the respondent/husband.

8. The appellant/wife, *vide* impugned order, was granted *pendente lite* maintenance in the sum of Rs. 25,000/- per month u/s. 24 of the HMA, 1955 and thus, by way of present Appeal, has sought the enhancement of interim maintenance to Rs. 2,00,000/- per month from Rs. 25,000/- per month.

9. The respondent/husband was admittedly an Assistant Professor who was employed on contract basis with the School of Planning and Architecture, Delhi (*hereinafter referred to as "SPA"*). However, his employment came to an end on 22.06.2019 and thereafter, he continued as a visiting Faculty with SPA. However, it has been alleged that the complaint filed by the appellant/wife resulted in the termination of his contract as a



visiting Faculty with SPA and the same has not been renewed. Now, the respondent/husband is engaged in providing Architectural Services and Interior Designing and has four to five clients based in Gurugram and he earns about Rs. 40,000/- per month. The respondent/husband's monthly expenditure is about the same amount as he is earning.

10. The respondent/husband has further asserted that the appellant/wife is a qualified Chartered Accountant, who is residing in her parent's home at A-54, Shivalik Malviya Nagar, New Delhi.

11. It is asserted that the appellant/wife had sought interim maintenance of Rs. 3,74,000/- per month in the proceedings under the Protection of Women from Domestic Violence Act, 2005 while a sum of Rs. 4,24,000/- per month has been claimed as interim maintenance in proceedings under Section 125 of the Code of Criminal Procedure, 1973. The varying unjustified amounts being claimed by the appellant/wife under different proceedings by way of interim maintenance from the respondent/husband only reflect that she is out to harass the respondent/husband. In addition, the appellant/wife has also instituted several frivolous litigations, including criminal complaints entangling the family members of the respondent/husband. It is, therefore, claimed by the respondent/husband that the appellant/wife is not entitled to any maintenance.

12. The claim of the respondent/husband is contested by the appellant/wife who has admitted that she is a Chartered Accountant by profession and that she was earlier working with her father, who is also a Chartered Accountant. The appellant/wife has explained that though she has been shown as a sleeping partner in the Firm of her father, but she, in fact, is not working anymore and thus, does not have any income therefrom. The



appellant/wife had also admitted that she was doing a job, but she claimed to have left it in the month of June, 2022 and since then, she is unemployed.

13. **The learned Judge, Family Court observed** that the income of the appellant/wife as per her Income Tax Returns filed for the Assessment Year 2020-21, 2021-22 and 2022-23, when added, reflect that she had a monthly income of about Rs. 29,000/-. Likewise, on averaging the Income Tax Returns of the respondent/husband, his average monthly income amounts to Rs. 46,627.33/-. However, the marriage of the parties was organized in a 5-Star Hotel and they had gone for their honeymoon to Maldives. Moreover, the houses of the parties are located in posh colonies of Delhi. The appellant/wife had been residing at A-54, Shivalik Malviya Nagar, New Delhi. Likewise, the respondent/husband had been residing at Navjeevan Vihar, Near Aurobindo College, New Delhi. From the surrounding facts and the Bank Statements of the respondent/husband it was concluded that both belonged to higher-middle-class society and the income of the respondent/husband was assumed to be Rs. 1,00,000/- per month.

14. The learned Judge, Family Court thus, directed a sum of Rs. 25,000/- per month to be paid to the appellant/wife as *pendente lite* maintenance. The litigation expenses were declined by observing that she has already been granted litigation expenses of Rs. 25,000/- in other proceedings.

15. The present Appeal has sought enhancement of interim maintenance from Rs. 25,000/- to Rs. 2,00,000/- per month.

16. **The main grounds of challenge, raised by the appellant/wife,** are that the respondent/husband belongs to the upper-high class segment of the society, leading a lavish lifestyle and thus, the amount granted towards interim maintenance is much less, considering that the monthly income of



the respondent/husband of Rs. 1,00,000/-.

17. It is asserted that the appellant/wife's income has been wrongly assessed at Rs. 29,000/- as she has not only filed her sworn affidavit, but also the documents to show that she is unemployed as she had lost her job in June, 2022.

18. It is further submitted that the respondent/husband is enjoying the lifestyle and high-class status which is not possible to be maintained from his assessed income of Rs. 1,00,000/- per month as assessed by the learned Family Court. Moreover, Rs. 25,000/- per month as granted to the appellant/wife is not sufficient to afford a decent lifestyle in a city like Delhi.

19. Also submitted that the respondent/husband is a man of means with multiple sources of income and has no liability. On the contrary, the appellant/wife is not only vulnerable but also has no independent source of income and is living at the mercy of her family friends at their house as paying guest. Therefore, it is submitted that the interim maintenance be enhanced from Rs. 25,000/- to Rs. 2,00,000/- per month.

20. **Learned Senior Counsel on behalf of the respondent/husband,** however, has asserted that not only the appellant/wife is a highly qualified woman, but she had been working as per her own admissions till June, 2022. The appellant/wife continues to be a sleeping partner in the Firm of her father. Considering the appellant/wife's qualifications and that she had been working regularly, she has been granted interim maintenance much more than what she is entitled to. Therefore, it is submitted that the present Appeal is liable to be dismissed.

21. **Submissions heard from the learned counsels for the parties and**



the documents and evidence perused.

22. Pertinently, the marriage between the parties could not subsist for more than 10 months. The respondent/husband is a qualified Architect who had been working with SPA and was also a visiting Faculty, though his contract had come to an end on 24.10.2020. As per his own admissions, he has now four to five clients based in Gurugram and he is residing in a rented accommodation near Aurobindo College, New Delhi.

23. Significantly, the appellant/wife is similarly qualified as she is a Chartered Accountant. As per her own admission, she has been shown as a partner in the Firm of her father, though the appellant has asserted that she is a sleeping partner and has no income from the Firm of her father.

24. The Income Tax Returns filed for the previous years, when averaged, reflect the income of the respondent/husband at about Rs. 46,627.33/- per month, while those of the appellant's have added up to Rs. 29,000/- per month. It is significant to observe that both the appellant/wife and the respondent/husband are equally qualified and had been working for years. As has been rightly observed by the learned Judge, Family Court, we find that before marriage, each party has a tendency to depict their affluence and claim exaggerated amount of income, but unfortunately, the day disputes arise between them, their incomes suddenly flounder and they both pretend to have become pauper without any steady source of income. Despite that, they both continue to have a similar standard of living from the sources which are unknown or are apparently loans from the friends and family, of which no details are forthcoming.

25. We find that the learned Judge, Family Court has made a reasonable assessment of the income of both the parties after considering their



qualifications as well as the earning capacity. The income of the respondent/husband has been taken as Rs. 1 lakh and the appellant/wife has reasonably been awarded the interim maintenance @ Rs. 25,000/- per month.

26. Accordingly, we find no infirmity in the impugned Order dated 28.07.2023.

27. The present Appeal is without merit which is hereby dismissed, along with pending application(s), if any.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 11, 2023
S.Sharma/ janhvi