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

+ **MAT.APP.(F.C.)23/2014**

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Judgment dated 23.09.2015

SHRI HARDEEP SINGH

..... Appellant

Through : Mr.S.B. Singh, Advocate for the appellant
along with appellant in person.

versus

SMT SAVITA

..... Respondent

Through : Mr. Sanjay Aggarwal, Advocate for the
respondent along with respondent in
person.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. Appellant has filed the present appeal under Section 19 of the Hindu Marriage Act for setting aside order dated 08.11.2013(impugned order) passed by the Family Court for granting interim maintenance @ Rs.10,000/- per month and litigation expenses of Rs.5,500/-.
2. The appellant had filed a petition seeking grant of divorce on the ground of cruelty under Section 13(1) (i-a) of the Hindu Marriage Act. During pendency of this petition, an application was filed seeking interim maintenance. The marriage between the parties was solemnized on 06.05.2011. The respondent had claimed before the Family Court that she is a housewife and is not gainfully employed, nor she has any source of income to maintain herself. According to the respondent, her husband, appellant herein, is an advocate having income of more than Rs.1,00,000/-

per month. Additionally, he has land in Haryana, out of which he was also receiving income. The respondent had claimed Rs.50,000/- per month as maintenance. In the detailed affidavit filed by the respondent, she admitted that she is B.A., M.Ed. and was at present pursuing M.A.(Psychology), but she was not gainfully employed. It has further been testified that she was dependent on her retired father, who was supporting six dependents, including her mother, grand parents and other siblings. The Family Court awarded maintenance to the respondent @ 10,000/- per month. Litigation expenses to the tune of Rs.5,500/- was awarded.

3. Learned counsel for the appellant submits that the respondent is a well-educated person with independent source of income. While the appellant is an advocate, but he is not practising. It is also contended that although the appellant is enrolled with the Bar Council of Delhi since 2005, he had been attending Court only for learning till November, 2011 and he was working in the office of one of his relatives. He was not earning and he continued his studies as a student of M.A. Political Science from IGNOU and thereafter LLM from Kurukshetra University and at present he is full time Ph.D. student at Mewar University since 2012 and all the expenses are being met by his mother. With respect to 3.3 acres of land, it is explained that it is divided into many small portions between his family members.
4. We have heard the learned counsel for the parties, considered their rival submissions and carefully examined the impugned order passed by the Family Court.
5. The Family Court has considered the fact that the appellant has been unable to show that the respondent is gainfully employed. Even during the course of hearing, the appellant was unable to establish before this Court that the respondent is gainfully employed, no particulars have been furnished. We may also take note of the fact that the respondent had sworn an affidavit

before the Family Court that she is not gainfully employed and she does not have any source of income. The appellant, on the other hand, is a qualified lawyer duly registered with the Bar Council of Delhi(Registration No.D/1177/2005). The learned counsel for the appellant has strongly urged before this Court that the appellant is dependent upon his mother and he himself only earning Rs.1,000/- per month. The Family Court in its impugned order has taken note of the fact that the appellant herein has not bothered to give details of his profession, whether he was practising independently or attached to some law firm, the appellant has also did not file his Income Tax Returns which would have given at least some idea with regard to his income. Admittedly, the appellant has been in practice since the year 2005. Thus, it cannot be reasonably expected that he would be earning Rs.1,000/- per month, which is far below the earning of even a clerk, peon or a sweeper. The Family Court has also noticed the fact that the appellant owns a Santro Car and has been paying insurance premium to the tune of Rs.5,000/- per month which he purchased in the year 2008 which, in our view, is also an indication that the appellant has given a false declaration with regard to his earning.

6. Courts have been struggling while deciding applications under Section 24 of the Hindu Marriage Act. It was repeatedly taken note that no set formula can be laid down for fixing the amount of maintenance. It has also been repeatedly held that parties do not reveal and reflect their true income and that the Courts are often left for guessing.
7. A Single Judge of this Court in the case of ***Bharat Hegde v. Saroj Hegde***, reported at 140 (2007) DLT 16 has culled out 11 factors, which can be taken into consideration for deciding the application under Section 24 of Hindu Marriage Act.
8. It has been noticed by the Courts that the tendency of the spouses in

proceedings for maintenance is to not truthfully disclose their true income. However, in such cases some guess work on the part of Court is permissible. (See *Jasbir Kaur Sehgal (Smt.) v. District Judge, Dehradun & Others*, reported at (1997) 7 Supreme Court Cases 7).

9. In the case of *Manmohan Kohli v. Natasha Kohli*, [CM(M) No.1019/2010] decided on 06.02.2013, one of us, G.S. Sistani, J., had culled out various factors, which can be taken into consideration while fixing the maintenance, and held as under:

“26. Although there cannot be an exhaustive list of factors, which are to be considered in guessing the income of the spouses, but the order based on guess work cannot be arbitrary, whimsical or fanciful. While guessing the income of the spouse or to get an idea of the income and lifestyle of the parties the Court can take into consideration amongst others the following factors:

- (i) Life style of the spouse;
- (ii) The amount spent at the time of 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 and other help;
- (vii) Credit cards;
- (viii) Bank account details;
- (ix) Club Membership;
- (x) Amount of Insurance Premium paid;
- (xi) Property or properties purchased;
- (xii) Rental income;
- (xiii) Amount of rent paid;
- (xiv) Amount spent 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 were residing together;
- (xix) Amount spent on fees and other expenses incurred;
- (xx) Amount spend on extra-curricular activities of children

when parties were residing together;
(xxi) Capacity to repay loan.

27. These are some of the factors, which may be considered by any court in guesstimating or to get a rough idea of the income/life style of a spouse/parties. It has repeatedly been held by the Courts that one cannot ignore the fact that an Indian woman has been given an equal status under Articles 14 and 16 of the Constitution of India and she has a right to live in dignity and according to the status of her husband. The same would also apply to the minor child as well.”

10. In our view, in this case the Family Court has rather taken a conservative view in the matter while fixing the maintenance. The Family Court has noticed that the appellant has failed to disclose material particulars, such as details of his profession, whether he was practising independently or attached to some law firm, the appellant has also did not file his Income Tax Returns. We find no infirmity in the impugned order passed by the Family Court.
11. The petition is devoid of any merit and the same is dismissed with costs of Rs.10,000/- to be paid to the respondent.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 23, 2015

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