

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **C.M. (M) No.307/2009 & 732/2009**

Decided on : 23rd March, 2015

+ C.M. (M) No.307/2009
URVASHI AGGARWAL Petitioner
Through: Mr. S.C. Singhal & Mr. Pradeep Verma,
Advocates.
versus
INDER PAUL Respondent
Through: In person.

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+ C.M. (M) No.732/2009
INDER PAUL Petitioner
Through: In person.
versus
URVASHI GARG Respondent
Through: Mr. S.C. Singhal & Mr. Pradeep Verma,
Advocates.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. Brief facts of the present case are that a marriage was solemnized between the parties on 11.11.1997 according to Hindu rites, customs and ceremonies at Delhi. Out of the said wedlock three children were born where one female child born on 11.10.1998

expired immediately while one male child born on 14.08.2000 and one female child born on 14.08.2002 are in care and custody of the wife.

2. Soon thereafter problems ensued between the parties and the husband filed a divorce petition U/s. 13 (i)(a) HMA vide. HMA No. 219/08/06. During the pendency of the divorce petition, the wife filed for maintenance under S. 24 and 26 of the HMA on 29.03.2006 seeking grant of maintenance interim pendent lite to the tune of Rs. 35,000/- per month and litigation expenses of Rs.22,000 for the maintenance of herself and her two minor children. The wife in her application further stated that the monthly expenses of both the children are more than Rs 5,000/- each.
3. The wife had alleged that the husband is employed in Airport Authority of India and earning Rs.20,000/- per month. Apart from this, he is doing business under the name and style of M/s Galaxy Financial Services. It was also alleged that he has movable properties and interest in family business from where he is earning approximately Rs.50,000/-. She claimed that she is herself earning

Rs.8,200/- per month. She claimed maintenance at the rate of Rs.35,000 per month as she is earning Rs.8,400/-.

4. The husband has refuted this and claimed that he is earning only Rs.9,591/- or so. The other allegations regarding business interest, it was stated that wife has sufficient income to maintain herself.
5. The application for maintenance was disposed of vide order dated 21.09.2006, granting maintenance of Rs. 15,000 per month for self and two children and Rs. 11,000 as litigation expenses to the wife.
6. The husband aggrieved by the said order preferred an application for review U/s 114 CPC read with S. 151 CPC. The Ld. ADJ vide order dated 20.09.2008 reviewed the order of maintenance passed earlier and directed the husband to pay maintenance of Rs. 3,500/- per month to each of the two children that is Rs 7000/- in entirety. So far as the maintenance to the wife was concerned, it was observed that as she was earning, therefore, she was not entitled to any maintenance.
7. Soon thereafter the husband filed another application U/s 25(2) of the HMA read with S.151 of CPC seeking reduction of maintenance amount at the rate of Rs. 1000/- per month and also

praying for the cancellation of the litigation charges awarded under the terms of the order dated 20.09.2008. The said application was filed on the grounds that the wife is a government employee and her salary was enhanced by the VI the pay Commission with effect from 1.1.2006.

8. On 27.11.2008, the wife filed another application under S.24 of HMA for enhancement of maintenance. The Ld. Court of ADJ vide order dated 6.6.2009 fixed the total expenditure of the two children at Rs. 15,400/- per month and by clubbing the income of the husband and wife which together came to roughly Rs.46,000/- out of which he seems he gave $\frac{1}{3}$ rd of the income for the maintenance of children which came to Rs.15,400/-. He further directed that as the wife is earning approximately Rs.8,400/-, the husband should contribute Rs. 13,000/- per month and the remaining balance of Rs 2,400/- was to be borne by the wife leading to the present appeals.
9. It is an admitted fact that wife is an employee of MCD and net income comes to approximately Rs. 8,467/- while the husband on the other hand is employed with Airport Authority of India Ltd.

and his net income is approximately 20,000/- where 7,107/- are his provident fund contributions.

10.It is the submission of the husband that he has also filed an application under S.26 of HMA seeking custody of his minor children which is still pending.

11.The wife has contested that the Ld. Trial Court has no power to review the order dated 21.09.2009 as the husband was unable to prove any error apparent on the face of the records .Further the wife has averred that the husband has been promoted to the post of manager and there has been an increase in his salary and the allowances on account of promotion and further on account of implementation of the 6th Pay Commission. It was also alleged that he also owns a business under the name and style of M/s Galaxy Financial Services apart from a car and certain immovable properties. That the aforementioned factors were not considered and taken into account by the Id. Trial court.

12.I have heard the learned counsel for the parties as both of them have this maintenance order one seeking reduction and the other seeking enhancement. So far as this challenge is concerned, it has

been pending for the last almost six years and it is very unfortunate that the petition filed under the HMA Act has remained pending from 2009 onwards till 2015 and main case of divorce has not made any substantial progress so far. Therefore, if there are any changed circumstances, the parties must go back to the trial court and get the order modified rather than agitating before the High Court. So far as the present orders are concerned, the learned counsel for both the parties have not been able to show that there is any illegality, impropriety or jurisdictional error in the order of maintenance. Accordingly, both the petitions stand dismissed.

V.K. SHALI, J.

MARCH 23, 2015
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