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HIGH COURT OF DELHI AT NEW DELHI

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C.M. (M) No.1530/2007

Decided on : 11th March, 2015

PRADEEP KAUR

..... Petitioner

Through: Mr. Tarun Kr. Bedi, Advocate.

Versus

H.S.KHURANA

..... Respondent

Through: Mr. Akshay Gaur, Advocate.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a petition filed under Article 227 of the Constitution of India assailing the order dated 15.9.2007 passed by the learned Additional District Judge granting maintenance of Rs.6,000/- per month to the petitioner and her the then two minor children.

2. The learned counsel for the petitioner has been heard, who has contended that the order of maintenance of Rs.6,000/- per month is grossly inadequate on account of the expenses which the petitioner is incurring the expenses of the studies of the children in a public school. It has also been stated that the petitioner is not carrying on any activity

which would have earned her some income while as it has been established on record that the respondent had interest in motor parts business in Kashmere Gate. Because of these reasons, it has been contended that the amount of maintenance which has been fixed by the trial court deserves to be enhanced.

3. I have gone through the impugned order. The order has been passed on 15.9.2007, that is almost seven years back, on the basis of an application filed by the petitioner wherein she had claimed a maintenance @ Rs.40,000/- per month along with litigation expenses to the tune of Rs.15,000/-. The case which was setup by the petitioner was that she has no moveable or immovable properties and no independent source of income and is living at the mercy of her parents and relatives. The respondent was taken to be a man of means having not only business of wholesale dealership of four-wheeler auto parts from where he was getting an income of Rs.1,50,000/-. It was further alleged that he was enjoying all modern amenities like air conditioned cars and carrying on business with his brother at Panipat of selling bed sheets and quilts under the business name of M/s. Homefab. The petitioner also alleged that the

respondent had a share in immoveable property bearing No.N-14, Street No.2, Bhai Shyam Lal College, Navin Shahdara, Delhi.

4. So far as the respondent is concerned, he contested the claim of the petitioner and stated that the petitioner is a M.A., B.Ed and has been taking home tuitions and earning around Rs.15,000/- per month. It was also alleged that she was running a boutique and earning Rs.12,000/- per month under the name and style of M/s. Sukhmani Creations. It was also alleged by the respondent that the petitioner was capable of earning Rs.20,000/- per month and with her consent, he had been made to shift in a luxurious apartment for the purpose of living with the petitioner. On the pleadings of the parties and the *prima facie* evidence, the court disbelieved the respondent that the petitioner was carrying out any private tuitions work or was running a boutique but in the same breath, the court also observed that although it was established that the respondent had some interest in the car business and the business of bed sheets, etc., it was assumed that the respondent was having a monthly income of not less than Rs.20,000/- per month. This assumption was drawn by the learned trial court by a valid and justified reasoning in the absence of any

prima facie definite proof having been produced by the petitioner. It may be pertinent here to reproduce the relevant paragraph wherein the observations of the learned Additional District Judge in this regard are given, which read as under :-

“No documents have been placed on record by the non-applicant on record to substantiate his contention that the applicant is gainfully employed in any manner presently, nor to substantiate that the applicant given tuitions, nor to indicate that the applicant runs a boutique. The applicant has however submitted through documents, i.e., the copy of the petition under Section 7 and 25 of the Guardians and Wards Act, 1890 filed by the petitioner/non-applicant dated 18.2.2003 that the non-applicant was a resident of H.No. N-14, Gali No.2, Navin Shahdara, Delhi, which, the applicant submits belongs to non-applicant. The applicant has further submitted that the non-applicant through para 18 (A) of this application has submitted that he was in a better position to look after the children and was qualified, both materially and morally to safeguard the interest of the children and it has been submitted further by the applicant that the very same address of the non-applicant was also shown in the application under Section 12 of the Guardian and Wards Act, 1890 filed by the petitioner before the court of learned Guardian Judge, Delhi. The applicant has also placed on record the copies of the fee receipts of the children to show that they were studying at the Delhi Public School, Mathura Road, New Delhi. The applicant has also placed on record, inter alia copies of rent receipts qua the premises No.C-138, Lajpat Nagar, IInd Floor issued by Sh. Gurcharan Singh, the landlord to the applicant to indicate that Rs.8,000/- per month was being paid as the rent. The applicant has also placed on record a copy of an LIC notice to the non-

applicant with his address C/o Car Needs, 78A, P.S. Jain Motor Market, Kashmere Gate, Delhi and has placed on record photocopies of visiting cards of Homefab and Car Needs bearing the name of H.S. Khurana, the petitioner and also a photocopy of hire purchase lease receipt issued by Satin Creditcare Network Limited to Auto Needs bearing the signatures of the non-applicant. Inter alia, the applicant has placed on record copies of telephone bill charges issued by Idea Cellular Limited to the petitioner/non-applicant dated 24.2.2006 for a mobile No.9891277668 and the applicant has also placed on record copy of a license in arrangement / agreement dated 28.3.1996 between Mr. Subhash Jain, Proprietor, United States and the petitioner qua shop at 78A, Lothian Road, Kashmere Gate, New Delhi, which indicates that the non-applicant and Mr. I.R. Batra were tenants of the said shop where the applicant has been contending that the non-applicant is running a business and qua which, the applicant has submitted that Mr. I.R. Batra has left the partnership and the non-applicant and his brother are in possession of the shop.

The documents submitted on record, prima facie are indicators to the effect that the claim of the non-applicant that his earnings are only through his employment with Hindustan Logistics and that he has no rights whatsoever in the business of wholesale dealership of auto parts at 78A, P.S. Jain Auto Market, Kashmere Gate, New Delhi and that he has no dealing with a firm known as M/s. Homefab and that he has no share in property No.N-14, Street No.2, behind Shyam Lal College does not appear probable. The earnings of the non-applicant thus in the circumstances of the case prima facie do not appear to be less than Rs.20,000/- per month at least.”

5. A perusal of the aforesaid analysis of *prima facie* evidence produced by the parties clearly show that the court had no other option but to assume that the income of the respondent was approximately well over Rs.20,000/- per month and it had chosen to grant nearly 1/3rd of the income to the petitioner for the purpose of maintenance of her children and herself. In the absence of any definite and cogent documentary evidence, the learned trial judge was left with no other option but to assume the nominal income of the respondent. The petitioner has been able to manage with the quantum of maintenance granted to her for the last seven years when the present petition has remained pending and there is no justification to change the same at this belated stage.

6. I do not find any jurisdictional error in the order which has been passed by the trial court in the light of the evidence which has been produced by the parties. As a matter of fact, I feel that despite the fact that the order has been passed almost more than seven years back, no sincere effort has been made by either of the parties to see that the divorce proceedings terminated into finality rather they have tried to keep the present petition, which is essentially against an interim order passed

in the application under Section 24 of the Hindu Marriage Act, 1955, having been filed by the petitioner alive before this court. The best course open to the petitioner would have been to get the proceedings expedited even if the respondent was indulging in dilatory tactics and have a definite finding so that the matter has been settled once for all.

7. In totality of circumstances, I do not find that there is jurisdictional error, illegality or impropriety in the order which has been passing keeping in view the evidence which has been produced by the parties before the trial court. Accordingly, the petition is dismissed.

V.K. SHALI, J.

MARCH 11, 2015
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