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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of hearing and order: 06.05.2015

+ MAT.APP.(F.C.) 113/2014
MAMTA

..... Appellant
Through: Mr. Arvind K. Gupta and Mr. Anshul
Garg, Advocates with appellant in
person.

versus

DALIP

..... Respondent
Through: Mr. Ajay Kumar, Advocate with
respondent in person.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR
HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

% **06.05.2015**

KAILASH GAMBHIR, J.(ORAL)

1. By this first appeal filed under Section 19(1) of the Family Courts Act, 1984, challenge is to the judgment dated 04.09.2014 passed by the learned Family Courts, Saket, New Delhi in HMA No. 820/2013 thereby granting interim maintenance of only Rs.1900/- per month to the appellant.
2. To assail the legality and correctness of the order dated 04.09.2014 passed by the learned Family Courts, Mr. Arun K. Gupta, learned counsel for the appellant submits that the respondent has deliberately suppressed his correct income from the learned Family Courts and even from this Court.

Inviting attention of the Court to the copy of the written Agreement placed on record by the respondent alongwith his additional affidavit, counsel submits that the respondent is admittedly paying a monthly rent of Rs.5,500/- for the rented accommodation, i.e., Premises No.1484, Wazir Nagar, Third Floor, Kotla Mubarak, New Delhi-110003 and if he has been earning an amount of Rs.8866/-, being a daily wager with National Human Rights Commission for performing the work of Data Entry Operator on contract basis, then at least he would not part with such a hefty amount towards rent for the rented accommodation. Learned counsel for the appellant also submits that the appellant has specifically stated that the respondent is running three vegetable shops in Kotla Mobarak, New Delhi and from the three shops, the respondent has been receiving a huge income and out of the total income from the three shops and the monthly income from the said post, he can conveniently pay the monthly maintenance amount of Rs.20, 000/- per month. Learned counsel for the appellant further submits that the learned Family Court has also not awarded any amount towards the litigation expenses.

3. The learned counsel for the respondents on the other hand submits that the respondent has truthfully and correctly disclosed his income before

the learned Family Courts as well as before this Court and further submits that the respondent is employed with the National Human Rights Commission as a daily wager and his monthly income is around Rs.8866/-. With this meagre income, he can hardly afford to pay the amount of more than Rs.1900/- which has already been awarded by the learned Family Court in favour of the appellant. Counsel also submits that out of Rs.8866/-, the respondent has to pay a monthly rent of Rs.5,500/- for the rented accommodation, besides meeting expenses for his own day to day requirements.

4. We have heard the learned counsel for the parties and perused the material placed on record.

5. Pursuant to the directions given by this Court on the last date, the respondent has filed an affidavit. This affidavit has been filed by the respondent in terms of the direction given by the learned Single Judge of this Court in *FAO No.239/1996, titled Kusum vs. Mahinder*. In this affidavit, respondent has reiterated that he has been drawing Rs.403/- per day and after attending duties for 22 days, his monthly income comes to Rs.8866/-. He has also stated that he has to meet all the expenses from this amount. Respondent has admitted the fact that in respect of the rented

accommodation, which he has taken on lease vide lease Agreement dated 30.12.2014 he has been paying a monthly rental of Rs.5,500/- per month. The respondent has also admitted that he has a mobile with him, but, has not disclosed the amount he has been paying towards the monthly bills of the mobile. Although there is no material placed on record by the appellant to substantiate that the respondent has been running three vegetable shops at Kotla Mubarak and that he earns a handsome amount from these 3 shops. But, at the same time we cannot believe that from the said monthly income of Rs.8866/-, the respondent can afford a rent of Rs.5500/- per month for the rented accommodation. If the said monthly rent is deducted from his monthly income of Rs.8866/-, then an amount of Rs.3366/- would be left at his disposal. And when an amount of Rs.1900/- is further deducted from his balance amount, then he would be left with a meagre amount of Rs.1466/-.

6. Certainly, the respondent would not be in a position to survive with the said amount of Rs.1466/-. We are quite surprised that the respondent has deliberately suppressed his income not only from the learned Family Courts but from this Court as well. The affidavit filed by the respondent, therefore, does not truthfully disclose his correct income.

7. As held by the Hon'ble Supreme Court of India in the case of *Jasbir*

Kaur Sehgal (Smt.) v. District Judge, Dehradun & Others, (1997) 7 SCC 7

that spouses in the proceedings for maintenance do not truthfully disclose their true income and therefore some guess work on the part of the Court is permissible. Further the Supreme Court has also observed that “considering the diverse claims made by the parties one inflating the income and the other suppressing an element of conjecture and guess work does enter for arriving at the income of the husband. It cannot be done by any mathematical precision”.

8. In this context, we may also profitably quote a passage from the judgment rendered ***Chander Prakash Bodhraj v. Shila Rani Chander Prakash AIR 1968 Delhi 174*** by this Court in wherein it has been opined thus:-

“An able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able to reasonably maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable to reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. When the husband does not disclose to the Court the exact amount of his income, the presumption will be easily permissible against him.”

9. In these circumstances and taking into consideration the amount of

rent being paid by the respondent and his expenses for attending to his day to day requirements, his monthly income is assessed at Rs.20,000/- per month and taking this income as his monthly income, we award a sum of Rs.7,000/- per month towards interim maintenance of the appellant. We also award a sum of Rs.15, 000/- towards the litigation expenses of the appellant. To this extent the order dated 04.09.2014 passed by learned Family Courts, Saket, New Delhi is modified and we accordingly direct the respondent to pay the interim maintenance from the date of filing of the application before the learned Family Courts. We also direct the respondent to pay the amount of arrears of maintenance alongwith litigation expenses on the next date of hearing fixed before the learned Family Court.

10. With aforesaid direction, the present appeal stands disposed of.

KAILASH GAMBHIR, J

I.S. MEHTA, J

MAY 06, 2015

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