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

+ **MAT.APP.(F.C.) 144/2014 & CM No.19685/2014**

RAKESH KUMAR Appellant
Through Mr. R.K. Gupta, Advocate with
Mr. R.K. Yashwant Singh,
Advocate

versus

GEETA KAUR Respondent
Through Mr. H.C. Sharma, Advocate with
the respondent in person

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

% **20.05.2015**

KAILASH GAMBHIR, J. (ORAL)

1. Challenge in the instant appeal is to the order dated 24.09.2014 passed by the learned Principal Judge, Family Court, Rohini, Delhi (*hereinafter referred to as the 'learned Family Court'*) wherein the learned Family Court has allowed the application preferred by the respondent under Section 24 of the Hindu Marriage Act, 1955 with the direction to the appellant to pay a sum of Rs.6,250/- per month towards her interim maintenance from the date of filing of the application besides awarding a sum of Rs.3,300/- towards litigation expenses.

2. Assailing the legality and correctness of the impugned order passed by the learned Family Court, Mr. R.K. Gupta, the learned counsel for the appellant, submits that there being no basis, the learned Family Court has arbitrarily assumed and assessed the income of the appellant at Rs.25,000/- per month and awarded an interim maintenance @ Rs.6,250/- per month on this income. The learned counsel further submits that the learned Family Court has also committed an apparent error in taking the view that the appellant is a skilled person and therefore, must be earning an amount of Rs.25,000/- per month. He further submits that the learned Family Court also failed to appreciate that the respondent herself is a skilled lady possessing diploma in Computer DTP and has studied up to 12th standard and with this technical qualification of the respondent, she is well capable of earning an handsome amount for her sustenance. The learned counsel also submits that the respondent is gainfully employed and is working at a garment shop at Tilak Nagar but she has deliberately suppressed her income from the learned Family Court and from this Court as well. The learned counsel also submits that presently the appellant is unemployed and has no source of income even for his own sustenance and therefore, he is totally hard-pressed to pay any maintenance amount to the respondent.

3. The present appeal is strongly opposed by Mr. H.C. Sharma, the learned counsel for the respondent. He submits that the appellant is earning a total income of Rs.65,000/- per month as he is working as a Senior Software Designer (Engineer) in a factory of computer designs of all kinds of designer soles of the shoes and sandals in Gurgaon. The learned counsel also submits that the appellant is an owner of two TSRs (3-wheeler scooters) which he gives on contract basis to other persons and from this source also he earns an amount of Rs.20,000/- per month. The learned counsel also submits that the appellant is the only son of his parents and is a joint owner of property bearing No.D-50, Jaswant Colony, Budh Vihar, Phase-II, Delhi. The learned counsel also submits that the appellant is in the habit of suppressing his correct and true income from the Court. Earlier also an order under Section 24 of the Hindu Marriage Act, 1955 was passed against him in a petition preferred by the appellant under Section 10 of the Hindu Marriage Act, 1955 and by the order dated 08.07.2010 passed by the learned Family Court, an interim maintenance of a sum of Rs.5,000/- was awarded as an interim maintenance assessing the income of the appellant at Rs.20,000/- per month. The learned counsel further submits that the said order dated 08.07.2010 was challenged by the appellant before this Court in C.R.P.

No.157/2010 and the said petition was dismissed by the learned Single Judge of this Court vide order dated 20.08.2010 while upholding the order passed by the learned Matrimonial Court. He further submits that in the order passed by the learned Single Judge of this Court it was observed that the appellant had been trying to conceal his correct income from the Court. The learned counsel also submits that the appellant has been taking divergent stands as in his reply to the application under Section 24 of the Hindu Marriage Act, 1955 he had disclosed his monthly income as Rs.6,000/- and when his statement under Section 165 of the Indian Evidence Act, 1872 was recorded then he disclosed his income as Rs.7,200/- and now before this Court he has taken a stand that he is unemployed and has no source of income. Based on these submissions, the learned counsel for the respondent strongly urged that the present appeal being based on false and vexatious facts be dismissed with heavy costs.

We have heard the learned counsel for both the parties and have perused the material on record including the order dated 24.09.2014 which is under challenge.

It is a matter of common knowledge that in maintenance proceedings the spouses do not come forward to disclose their true and

correct income. The suppression on the part of the earning spouse about his/her correct income makes the task of the Court quite difficult. A non-earning spouse generally inflates the claim of maintenance so as to put a pressure on the earning spouse so as to bring him/her to come to the terms while on the other hand the earning spouse, who mostly is the husband, would make every possible effort to suppress his correct income from the Court so that the wife gets deprived from getting sufficient amount to sustain herself. The Hon'ble Supreme Court in the case of ***Jasbir Kaur Sehgal (Smt.) v. District Judge, Dehradun and Ors., (1997) 7 SCC 7*** thus gave a solution to the Courts by suggesting that the Court must apply its own mind taking in view the totality of the facts and decide the income of the earning spouse by resorting to some guess work. While taking this view the Hon'ble Supreme Court had also put a note of caution that such a guess work should not be arbitrary, whimsical or fanciful.

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

“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, for reasons beyond his control, 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.”

It is also a settled legal position that the non-earning spouse has a right to enjoy equal status as is being enjoyed by the earning spouse and to live a life of dignity according to the status of the earning spouse.

As pointed out by the learned counsel for the respondent, earlier also the order of maintenance dated 08.07.2010 passed by the learned Family Court in a petition preferred by the appellant under Section 10 of the Hindu Marriage Act, 1955 was challenged by the appellant before this Court. By order dated 20.08.2010, the learned Single Judge of this Court had dismissed the appeal preferred by the appellant and while upholding the order passed by the learned Family Court made an observation that the appellant has been trying to conceal his true and correct income.

Relevant part of the said order is reproduced as under:-

“Since the petitioner concealed his income from the Court, therefore, in such circumstances the Court taking a conservative estimate arrived at the conclusion that the monthly salary of the petitioner would be Rs.20,000/-. The Court in the absence of any proof did not believe that the petitioner was running 2 three wheeler scooters. Taking into account the monthly income of the petitioner at Rs.20,000/- p.m. and after deducting a sum of Rs.5,000/- p.m. on the maintenance and education related expenses of his minor son

and after deducting 2/3rd of the remaining amount i.e. Rs.15,000/- for his own maintenance and day to day expenses the Court directed the petitioner to pay a sum of Rs.5,000/- to the respondent for her maintenance and for her residential requirements. Photocopy of the salary certificate now placed on record by the petitioner is not on any letterhead of the said factory. The same also does not bear any date and further it also does not disclose as in what capacity he has put his signature. Hence no authenticity can be attached to the said photocopy of the salary certificate placed on record by the petitioner. It is apparent that the petitioner has tried to conceal his income.”

Before the learned Family Court as well as in the appeal, the appellant has not come forward to disclose his correct income. The appellant has also not placed on record any evidence in the form of documents to show his employment with M/s D.K.S. Engineering Works, as per the stand taken by him in his statement recorded under Section 165 of the Indian Evidence Act, 1872.

The earlier certificate, which was filed by the appellant in reply to the application under Section 24 of the Hindu Marriage Act, 1955 is the same certificate which was earlier filed by the appellant in the proceedings under Section 10 of the Hindu Marriage Act, 1955 and the learned Single Judge commented on the said document as being the most unreliable piece of evidence.

We are also surprised on the stand taken by the appellant regarding his unemployment and that he has no source of income. The vacillating

stand of the appellant further demonstrates that his sole intention is to somehow deprive the respondent from getting any maintenance from him. It is not expected of a person, who despite possessing technical qualification and skills, is not engaged in any job or not earning any amount. Earlier also this Court had assessed the income of the appellant at Rs.20,000/- per month and now to assess his income at Rs.65,000/- after a gap of almost 5 years is quite realistic and cannot be faulted with.

In the light of the above discussion, we do not find any merit in the present appeal, same is hereby dismissed. No orders as to costs.

KAILASH GAMBHIR, J.

I.S.MEHTA, J.

MAY 20, 2015

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