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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of hearing and Order: 20.05.2015

+ MAT.APP.(F.C.) 67/2015

NISHANT JAIN

Through Mr. Pradeep Kumar, Adv. along with
appellant in person. Appellant

versus

SHEFALI JAIN

Through Nemo Respondent

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

KAILASH GAMBHIR, J (ORAL)

C.M. Appl. No.9437/2015 (Exemption)

Exemption allowed subject to just exceptions.

Application stands disposed of.

MAT.APP.(F.C.) 67/2015& C.M. Appl. No.9436/2015

1. Challenge in the present appeal is to the order dated 13.02.2015 passed by the learned Family Court, Rohini, New Delhi whereby the learned Family Court has granted the interim maintenance in favour of the respondent to the tune of Rs.17,350/- per month after assessing the income

of the appellant at Rs.52,000/- per month.

2. Assailing the legality and correctness of the impugned order, Mr. Pradeep Kumar, counsel representing the appellant submits that the appellant has been unemployed since the year 2008 and since then he has no source of income either to sustain himself or his wife. Counsel also submits that the appellant is fully dependent for all his financial requirements on his parents. Counsel further submits that the appellant has placed on record various documents including his income-tax returns and also the income-tax returns of his father, statement of bank account, etc. in support of his stand that he has not been earning any income. Counsel also submits that the appellant has correctly disclosed all the particulars in the affidavit dated 27.01.2014 filed by him pursuant to the directions given by the learned Family Court. Counsel also submits that the learned Family Court has also failed to consider the fact that the respondent is a graduate and is earning an amount of Rs.15,000/- per month by taking tuitions and she is also holding various bank accounts and is an income-tax assessee but she has concealed her income from the Court. Counsel also submits that the learned Trial Court has arbitrarily arrived at the conclusion to assess the income of the appellant at Rs.52,000/- per month taking into consideration the premium being paid by the appellant on his insurance policies and other assets which is in his possession and also the income earned from mutual funds. Contention raised by the counsel for the appellant that the learned Trial Court has ignored the fact that bonds and mutual funds were gifted to the appellant by his sister Rupali Jain, which matured in the year 2010-11 with the maturity value of Rs.7,59,566/-. Counsel further submits that in the balance-sheet placed on record by the appellant, Rs.18,19,228.98 was the

opening balance as on 01.04.2012 but the amount of capital as on 31.03.2003 has been Rs.13,39,601.36/-, which was further reduced to Rs.3,32,747.94/-. Counsel also submits that the mobile set which was purchased by the appellant in the year 2011 was for a meagre sum of Rs.1910/-.

3. We have heard the learned counsel for the appellant at considerable length and gone through the records. The appellant is also present in Court. This is a clear case of suppression of income by the appellant from the Court with the dishonest intention of not paying the interim maintenance to his wife. The stand taken by the appellant before the Family Court was that he has been unemployed since the year 2008. The appellant had married the respondent according to Hindu rites and ceremonies on 11.12.2010 and as per the stand taken by the respondent in the divorce petition, she was forced to leave the matrimonial house on 03.08.2012 and since then she has been staying at her parental house. This period from 11.12.2010 till 03.08.2012 evidently shows that both the parties during that period had stayed together and certainly the appellant must have been able to maintain not only himself but his wife also. It is not the case of the appellant that his wife was employed as on the date of the marriage or had some independent income based on which he thought of running the expenses of his family. In the application filed by the respondent, the stand taken by her was that the appellant was a man of means with an income of Rs.2 lakh per month and she had prayed for an interim maintenance at the rate of Rs.60,000/- per month in addition to her claim towards litigation expenses for a sum of Rs.55,000/-. In the reply filed by the appellant, he claimed that he had been unemployed since the year 2008 and since then he could not set up any

business due to the paucity of space available and as such he had been dependent on his parents. He also claimed that in fact he is entitled to maintenance from his wife rather than the other way around. He prayed for dismissal of the maintenance application preferred by the respondent. The appellant had placed on record his detailed affidavit in compliance of the directions given by the learned Family Court and based on that the learned Family Court reached to the conclusion that the appellant has not truthfully disclosed his income and has taken a false plea that he has been unemployed since the year 2008. The learned Trial Court in para 12 of the impugned order observed that the material on record reveals that this appellant has not come clean on record and has tried to conceal material facts from the Court. The Court further observed that in his affidavit he has disclosed that he owns a car make Toyota-Corolla Altis bearing registration no.DL4C NE 6091 (Model 2010). He has also shown LIC policies worth Rs.4 lacs for which he claims to be paying an annual premium of Rs.24,750/-. He had purchased a music system & LED TV both make Sony in the year 2010. He purchased a Samsung handset in the year 2011. The Court also observed that no prudent father of a girl would have married his daughter to an unemployed boy having no income unless such a boy owned some properties and had income yielding assets through which the family can financially sustain themselves. The Court also observed that the father of the appellant would not have got financed the car make Toyota-Corolla Altis for his unemployed son who had no income whatsoever. The Court also observed that the appellant had taken his wife to Singapore and Malaysia for honeymoon and he has been travelling by air to places like Bangalore. He also visited Ambe Maa, Abu Road, Rajasthan & Ujjain (MP). The Court further observed that this

appellant is a hale and hearty person. It is a tendency of the spouses in proceedings for maintenance to not truthfully disclose their true income. However, in such cases some guess work on the part of Court is permissible. (Ref: ***Jasbir Kaur Sehgal (Smt.) v. Distt. Judge, Dehradun & Ors., (1997) 7 SCC 7***).

4. Taking into consideration the totality of the facts and circumstances of the case set up by both the parties and taking into consideration the entire lifestyle of the appellant and also the fact that he is the only son of his parents and also the fact that he is residing with them in their house, the learned Trial Court assessed the income of the appellant at Rs.52,000/- and accordingly fixed interim maintenance of Rs.17,350/- per month. The Court also fixed a sum of Rs.7700/- towards litigation expenses.

5. We find no illegality, perversity or irrationality in the impugned order passed by the learned Trial Court. Even when the Court has questioned the appellant as to how he had purchased a Toyota-Corolla Altis car in the year 2010. He replied that the entire amount of Toyota car worth Rs.14 lacs was financed by his father. Even with regard to the premium amount which is being paid on the policies, the stand of the appellant is that the same is also being paid by his father. These pleas being taken by the appellant appears to the court *ex facie* false. Why would the father of the appellant pay the entire price money of the car to his unemployed son and would also keep on paying the premium amount for his insurance policies. We also cannot fathom that a father would provide is unemployed son not with an ordinary car with but such a costly car. It is often seen that in maintenance cases the spouses do not come forward to disclose their true and correct income. On the one hand the wife puts forward an exaggerated claim and on

the other the earning spouse/husband tries to suppress his correct income. This is not a case of suppression of income alone where the husband states that he is not earning a great amount but a meagre amount. To our shock, the appellant has come forward with a plea that he had not been earning any amount since the year 2008 although he married the respondent in year 2010. The learned Trial Court is correct in observing that no prudent father of a girl would have married his daughter to an unemployed boy.

6. While dismissing the present appeal, we do feel that this case deserves initiation of perjury proceedings against the appellant. We accordingly direct the learned Trial Court to further probe into this matter to examine that whether the appellant has resorted to total falsehood in his affidavit and if it appears so is the case then perjury proceedings will be initiated against the appellant. It is ordered accordingly.

**KAILASH GAMBHIR
(JUDGE)**

**I.S.MEHTA
(JUDGE)**

MAY 20, 2015
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