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

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Date of Decision: August 17, 2016

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MAT.APP.(F.C.) 12/2015

NAV RATTAN SINGH

..... Appellant

Represented by: Ms.Shriabhra Kashyap, Adv.

versus

RITA THAKUR

..... Respondent

Represented by: Mr.L.S.Saini, Advocate with
respondent in person

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J. (Oral)

1. The appellant/husband has impugned the order dated November 22, 2014 passed by the Family Court granting interim maintenance @ ₹ 16,000/- per month to the respondent/wife for her as well their minor daughter. In addition a sum of ₹8800/- was awarded towards litigation expenses.
2. The appellant/husband filed a petition for seeking grant of divorce on the ground of cruelty under Section 13(1)(ia) of Hindu Marriage Act. During the pendency of the petition for seeking dissolution of marriage, the respondent herein filed an application under Section 24 of the Hindu Marriage Act claiming maintenance for herself as well for their minor daughter though Section 26 was not specifically mentioned on the said application.
3. The application seeking interim maintenance was strongly contested by the appellant/husband mainly on the ground that the respondent/wife was highly educated and also working as a LIC agent whereas he was not even a matriculate

and earning about ₹7,000/- per month thus not in a position providing any maintenance to his wife and children.

4. The factum of the parties being got married on February 18, 2007 and birth of a female child on May 14, 2008 has not been disputed. It is also not disputed that the child is under the care of her mother who is residing separately.

5. Learned counsel for the appellant has submitted that the appellant is dependent on his parents. The income which he is able to earn is not even sufficient to meet his requirements and in that circumstance he is just not in a position to pay ₹16,000/- per month to his respondent/wife and daughter. Learned counsel for the appellant further contended that at some point of time the appellant/husband was working as a contractor with MCD but now he is not having enough contracts and otherwise also the profit margin in the contract used to be just 10% only. Attention of the Court has been drawn by the learned counsel for the appellant to the various payments received by the appellant/husband in his account from MCD for the work done by him under the contract awarded to him contending that more than 90% of the amount is spent on completing the project and he is had left with sufficient profit margin so as to make such a huge payment of ₹16,000/- per month to his wife and child.

6. We have carefully considered the record as well the statements made on behalf of the appellant/husband. Perusal of the impugned judgment shows that father of the appellant/husband was working as Superintendent Engineer with MCD. His elder brother is also employed with Tata Power Limited as Engineer.

7. We do not find it to be a case of love marriage. Then what persuaded a highly educated girl to marry a person who was not even a matriculate, the answer is not difficult to be found. The appellant must have been projected by his family as a big contractor of MCD. His father being Superintending Engineer and elder brother also an engineer with Tata Power Limited, she might have taken the decision to marry in an affluent family ignoring the educational qualification of the appellant obviously for the reason that he was in business i.e. contractor with

MCD.

8. After projecting a rosy picture to enter into a matrimonial alliance to marry a girl who is highly educated, the appellant cannot take the plea that he is not even a matriculate and not earning enough to support his family. It is a matter of fact that true income of the parties is within their personal knowledge. The monthly income of the husband may not be within the knowledge of the wife particularly when as per record father of the appellant was managing his affairs.

9. There are numerous instances where on failure of the husband to disclose his true income without giving reason the Court is compelled to draw a presumption against him and resort to some guess work to assess his income taking into consideration various factors enumerated in the decision reported as 140 (2007) DLT 16 Sh.Bharat Hegde Vs. Smt.Saroj Hegde authored by one of us (i.e. Pradeep Nandrajog, J.).

10. Learned Judge, Family Court while awarding the maintenance of ₹16,000/- per month has taken note of the following factors:-

- (i) Income tax return for the period 2007-2008 upto the year 2014;
- (ii) The information obtained by the respondent/wife under the Right to Information Act from MCD about the payment made to the appellant/husband which also included the details of the amount of tenders awarded and the payment made as detailed in para No.15 of the impugned order.
- (iii) The capital of the appellant has increased from ₹2,75,235.20 (as on March 31, 2013) to ₹3,85,913.03 (as on March 31, 2014).
- (iv) The appellant claimed to have paid ₹20,000/- per annum to the foreman and ₹50,000/- each per annum to the two wireman observing that no foreman or wireman would work at the monthly salary of ₹1600/- and ₹1200/- per month respectively.

11. After considering the income tax return, details of the payments made by MCD to him and the amount of tenders awarded to him as MCD

contractor, learned Judge Family Court has assessed his income to be about ₹36,000/- per month which in the given facts and circumstances cannot be termed as unreasonable.

12. Section 24 of the Hindu Marriage Act contemplates a summary inquiry and not a trial at length. While considering the claim for interim maintenance the Family Court has considered status of the parties, income of the appellant and reasonable want of the respondent/wife and the minor child. The amount of ₹16,000/- per month for the mother and the daughter is just sufficient to meet their basic requirements especially when the child is of school going age. The interim maintenance @ ₹16,000/- per month can neither be termed as exorbitant nor punitive.

13. Finding no merit the appeal is dismissed.

14. It has been urged before us that as on date the appellant is not having enough work from MCD or from any other agency and his income has depleted. If there is any change of circumstances, it is open for him to bring all the facts before the learned Judge Family Court and seek modification if he can so establish.

**PRATIBHA RANI
(JUDGE)**

**PRADEEP NANDRAJOG
(JUDGE)**

AUGUST 17, 2016
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