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

%   <u>*Date of Decision: August 22, 2016*</u>

+   **<u>MAT.APP.(F.C.) 24/2014</u>**

SMT SWATI ..... Appellant

Represented by: Mr.A.K.Chowdhary and Mr.Anil Kr.Chowdhary, Advocates.

versus

RAVISH KASHYAP ..... Respondent

Represented by: Mr.A.N.Aggarwal, Advocate with respondent in person. Mr.Asheesh Jain, Advocate for Income Tax Department.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

<u>PRADEEP NANDRAJOG</u>, J.

1. A fair amount of cacophony has been created by the appellant in an appeal spanning 46 pages. The result is all and sundry directions issued from time to time in the appeal.

2. Vide impugned order dated October 28, 2013 the learned Judge, Family Court has decided the application filed by the appellant under Section 24 of the Hindu Marriage Act, 1955 by granting her maintenance in sum of ₹3000/- (Rupees Three Thousand only) per month. The order notes that the appellant is maintaining an infant daughter born to the parties during the subsistence of the wedlock.

3. Salary of the respondent has been accepted to be ₹9000/- (Rupees

Nine Thousand only) per month.

4. Case pleaded by the appellant in her application under Section 24 of the Hindu Marriage Act, 1955 was that the respondent was working as a Regional Manager with M/s Horizons Lamkraft Pvt.Ltd., D-4, DSIDC Complex, Kirti Nagar, New Delhi-110015, at a monthly salary of ₹1,00,000/- (Rupees One Lakh only). She claimed maintenance in sum of ₹50,000/- (Rupees Fifty Thousand only) per month for self and her minor daughter.

5. The respondent denied the assertion and claimed to be an employee of M/s Rajkamal Plywood India Pvt.Ltd., 87/8/1, Gali No.9, Nangloi Mundka, New Delhi as a Sales Executive earning ₹9000/- (Rupees Nine Thousand only) per month.

6. In support of his plea, the respondent produced the salary slips issued by his employer.

7. Both parties filed affidavits disclosing their assets. The appellant disclosed 'Nil' assets and 'Nil' income. The respondent disclosed only one asset : a motorcycle bearing registration No.DL4SA-8323. He disclosed his salary to be ₹9000/- (Rupees Nine Thousand only) per month. He enclosed the salary certificate from the employer. He disclosed his PAN card No.ARCPK5689C.

8. The appellant could not establish her assertion that the respondent was employed with M/s Horizons Lamkraft Pvt.Ltd.; much less earning ₹1,00,000/- (Rupees One Lakh only) per month.

9. Under the circumstances the learned Judge, Family Court treated respondent's income at ₹9000/- (Rupees Nine Thousand only) per month and awarded maintenance to the appellant in sum of ₹3000/- (Rupees Three

Thousand only) per month for herself and for her minor daughter.

10. Order dated January 29, 2016 passed by the erstwhile Division Bench which was seized of the matter records that photocopy of the PAN card filed by the respondent shows his age to be 15/02/1982. The numeral *'8'* is a clear overwriting. This resulted in following directions being issued:-

> *(i) A direction is issued to the Income Tax Authorities, ITO, New Delhi to verify the correctness of this PAN Card placed at page 73 of the paper book and to place a report in this regard.*
>
> *(ii) The authorities shall also furnish a report to this court of the last four income tax returns filed by Mr.Ravish Kashyap, respondent herein.*
>
> *(iii) A direction is also issued to M/s Rajkamal Plywood Indi Pvt.Ltd. Plot No.87/8/1, Gali No.9, Nangloi Mundka, New Delhi-110041 and M/s Horizons Lamkart Pvt.Ltd., D-4, DSIDC Complex, Kirti Nagar, New Delhi-110015 to cause to be produced before this court the applications for employment of the respondent as well as a statement of his salary including all emoluments thereon as well as deductions effected thereon for the last six years since 2010.*

11. Thereafter the parties were referred to mediation. The mediation has failed.

12. There is no response from M/s Rajkamal Plywood India Pvt.Ltd. as also from M/s Horizons Lamkraft Pvt.Ltd. As regards the income tax authorities, Sh.Ashish Jain, Advocate appeared and informed that PAN card bearing No.ARCPK5689C has been issued in the name of the respondent with date of birth February 15, 1972. The respondent explained that when he received the PAN card he found that his date of birth was wrongly recorded and thus he made a correction by hand. Born in the year 1982 he

corrected the year 1972 to make it 1982.

13. This is an innocent mistake for the reason the software of the income tax authorities links returns through PAN card number. Mr.Ashish Jain, Advocate informs that pertaining to PAN card no return has been filed. Indeed, the income of the respondent is below taxable limit.

14. Intrinsic in this information is the proof that the respondent cannot be an employee of M/s Horizons Lamkraft Pvt.Ltd. and earning ₹1,00,000/- (Rupees One Lakh only) per month, for if this was so the employer would have deducted tax at source and deposited the same with the income tax authorities. The software would have linked it to the PAN card of the respondent.

15. The educational qualifications of the respondent are Class-X pass and it is difficult to believe that a person with such educational qualifications would be employed at a salary of ₹1,00,000/- (Rupees One Lakh only) per month.

16. Be that as it may, the respondent has given proof of his employment as a Sales Executive with M/s Rajkamal Plywood India Pvt.Ltd. Salary certificate from the employer has been filed. The appellant has not been able to show any asset acquired by the respondent.

17. Under the circumstances, salary of the respondent being ₹9000/- (Rupees Nine Thousand only) per month, maintenance awarded to the appellant in sum of ₹3000/- (Rupees Three Thousand only) per month is justified for the reason the respondent lives in a rented accommodation and has a mother to support.

18. The address of the respondent is also an indication of his economic status. He lives in an unauthorized colony in Najafgarh, which is a rural

area of Delhi.

19. The appeal is dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

AUGUST 22, 2016
skb