

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

% *Date of Decision : September 14, 2016*

+ **MAT.A.(F.C.) 51/2014**

SHRI SONUAppellant
Represented by: Mr.S.S.Dahiya, Advocate

versus

PREMLATARespondents
Represented by: Mr.Pradeep Kumar, Advocate

MAT.A.(F.C.) 77/2014

SMT.PREMLATA & ORS.Appellants
Represented by: Mr.Pradeep Kumar, Advocate

versus

SONURespondent
Represented by: Mr.S.S.Dahiya, Advocate

CORAM:

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

PRADEEP NANDRAJOG, J.

1. Sonu and his wife Premlata are aggrieved by the order dated February 20, 2014 disposing of application filed by Premlata under Section 24 of the Hindu Marriage Act, 1955. From out of the wedlock a daughter currently aged 9 years and a son currently aged 7 years were born. Premlata was a housewife. She has no income. It is not the case of Sonu that his wife was or is earning any money.

2. As per the impugned order, Premlata has been awarded maintenance in sum of ₹18,000/- per month from the date of the application filed by Premlata. In arriving at the income of Sonu the learned Judge Family Court has taken into account the income tax returns of Sonu for the years 2008-09, 2009-10 and 2010-11 and has highlighted that the same show that Sonu is engaged in a private business from which gross receipts increased from ₹4,38,743/- in the year 2008-09 to ₹6,40,530/- in the year 2010-11. The learned Judge Family Court has noted that as per the returns salary paid by Sonu to his employees has increased. In the statement made to the Court by Sonu, he claimed having employed labour through a contractor to whom he pays ₹20,000/- per month. As per the statement he has two regular employees to whom he pays ₹5,000/- per month as salary. Analyzing the income tax returns the learned Judge Family Court has found that the returns for the three years under scrutiny evince net profit to be around 30% of the gross receipts. Learned Judge Family Court has highlighted that Sonu withheld vital documents in the form of income tax returns for the years 2011-12 and 2012-13. The learned Judge has noted that Premlata has filed photographs of the workshop where Sonu carries on business. The photographs show six machines installed. The learned Judge has noted that Sonu has obtained two policies from the Life Insurance Corporation of India and pays annual premium in sum of ₹26,580/-. The learned Judge Family Court has opined that keeping in view the salaries paid by Sonu and premium paid to the Life Insurance Corporation of India, Sonu needed to be examined in Court and when examined he admitted that gross receipts from business were ₹10.65 lacs in the year 2011-12 and ₹11.65 lacs in the year 2012-13.

3. Opining that there was sufficient material to conclude that Sonu was hiding his true income, the learned Judge has proceeded to consider reasonable monthly expenses to be borne by the wife. Tuition fee for both children being concededly ₹1,600/- per month, house hold expenses have been estimated between ₹8,000/- to ₹10,000/- per month. ₹2,000/- per month towards water and electricity charges and ₹3,000/- per month towards other miscellaneous expenses such as clothes for the children, medical emergencies etc. The learned Judge has arrived at the figure of ₹18,000/- per month as reasonable maintenance.

4. For the purpose of the two appeals, relevant would it be to highlight that Sonu had also filed a petition under Section 25 of the Guardians and Wards Act, 1890 praying to be appointed as Guardian of his two minor children with their custody entitled to him. On May 24, 2016 he withdrew the petition admitting that he was in a live-in relationship with another woman named Sita who had a daughter through him and was six months old as of May 24, 2016.

5. The object behind Section 24 of the Hindu Marriage Act, 1955 is to provide for maintenance, pendente-lite, to a spouse in matrimonial proceedings so that during the pendency of the proceedings the spouse can maintain herself/himself and also have sufficient funds to carry on the litigation so that the spouse does not unduly suffer in the conduct of the case for want of funds.

6. A spouse unable to maintain himself/herself is entitled to maintenance on the principle of equi-status and respect that the spouse would have enjoyed if he/she continued to live with other spouse.

7. The provisions of Section 24 are beneficent in nature and the power is exercised by the Court not only out of compassion but also by way of judicial duty so that the indigent spouse may not suffer at the

instance of the affluent spouse. The legislature, in its discretion, has not fixed any guideline regarding ceiling limit of maintenance, pendente-lite, as in the case of Divorce Act or Parsi Marriage Act. The word '*support*' in Section 24 is not to be narrowly interpreted. It does not mean bare existence. It means that the claimant spouse should have the same comfort as the other. Of course, the Section is not intended to bring about arithmetical equality between the two.

8. The Court while considering the merits of an application for grant of an interim maintenance under Section 24 has to necessarily arrive at prima-facie determination about the earning capacity of the rival claimants. The determination cannot be made with exactitude; it is essentially interim in nature. The Court is called upon to make a summary consideration of amount which the applicant is to be awarded by way of maintenance pendente-lite and litigation expenses in accordance with the financial resources of the parties. Capacity of the other party to earn cannot be taken into consideration – it is only the actual earning of the opposite party on the basis of which relief can be granted. Permanent income and not casual income is relevant. For example if a husband brings on record that the non-applicant wife earns some amount by taking coaching classes for children, this cannot be termed as her permanent income or that the wife has independent permanent source of income. The proceedings being summary, the matter has to be decided on the basis of pleadings supported by affidavits and the documents that may be filed by the parties in support of their case.

9. Where there was sufficient means in the family of the husband on the strength of which the husband got married he has to share the burden to support his wife during the course of annulment of such marriage.

10. Where the parties do not come forward with exact income they have, the Court would have no alternative but to apply its guess-work. In the decision reported as 140 (2007) DLT 16 Sh.Bharat Hegde Vs. Smt.Saroj Hegde it was held that under noted eleven factors have to be taken into account: -

- (i) Status of the parties.
- (ii) Reasonable wants of the claimant.
- (iii) The independent income and property of the claimant.
- (iv) The number of persons, the non applicant has to maintain.
- (v) The amount should aid the applicant to live in a similar life style as he/she enjoyed in the matrimonial home.
- (vi) Non-applicant's liabilities, if any.
- (vii) Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.
- (viii) Payment capacity of the non applicant.
- (ix) Some guess work is not ruled out while estimating the income of the non applicant when all the sources or correct sources are not disclosed.
- (x) The non applicant to defray the cost of litigation.
- (xi) The amount awarded u/s 125 Cr.PC is adjustable against the amount awarded u/ 24 of the Act.

11. As per Sonu, the learned Judge having opined that 30% of the gross receipts received by him would reflect his income lost sight that for the years 2011-12 and 2012-13, he having admitted gross receipts in sum of ₹10.65 lacs and ₹11.65 lacs respectively, his monthly income could not be more than ₹35,000/- per month; as recorded by the learned Judge

Family Court in para 8 of the impugned order. Thus, as per Sonu the monthly maintenance awarded needs to be reduced.

12. Now, concededly the respondent is maintaining two children and assuming Sonu earns ₹35,000/- per month he must pay to his wife ₹18,000/- per month because she has to maintain not only herself but the two minor children. Applying the rule of the thumb that a family comprising a husband, wife and two children could be put in the ratio 1:1:1 i.e. the two children taken as one unit, the monthly income pie would be split into three parts and this would be approximately ₹12,000/- per month.

13. The problem which Judges in India face while computing the income of self-employed persons has been highlighted by this Court in Bharat Hegde's case (supra). Regretfully, tax avoidance is the norm. But of lately, irresponsible pleadings by lawyers and litigants just about signing anything prepared by the lawyers has added to the misery of the Judges. Instant case highlights this.

14. Called upon by the learned Metropolitan Magistrate in proceedings under Section 125 Cr.P.C. initiated by Premlata to file an affidavit disclosing his income, Sonu disclosed his income at ₹14,000/- per month from business. ₹1,500/- from rent. While disclosing his expenditure Sonu said on oath that towards his personal expenses he spends ₹4,000/- per day. Now, if Sonu claims to be spending ₹4,000/- per day on himself he would obviously be earning more than ₹1,20,000/- per month. Further, in the proceedings concerning the application filed by Premlata under Section 24 of the Hindu Marriage Act, 1955, in response to the affidavit filed by Premlata, Sonu filed an affidavit deposed to on January 28, 2014, in para 22 whereof he deposed:-

“22. It is wrong to say that petitioner is a man of means and carrying on a flourishing business of manufacturing of auto parts at House No.185, Gali No.7, Bhalswa Gaon Delhi – 110033, and is earning more than ₹53,500/- per month and thereby earning a gross income of around 6,40,530/- as per the income tax return filed in the year 2011-12. It is worth mentioning here that at present the income of the petitioner must be ₹65,000/- or more per month.”

15. Strange! Sonu denies the assertion made by his wife that he earns ₹53,500/- per month. But goes on to state on oath that his present income is ₹65,000/- per month. Well, it may not be strange for the reason a truthful husband would refute the wife's claim that he earns ₹53,500/- per month and assert truthfully that as a matter of fact he earns ₹65,000/- per month.

16. We go by experience and conventional wisdom. The parties belong to a not so well to do strata of the society. They reside in Jahangirpuri, which at one point of time was declared as a slum and jhuggi cluster. But some residents of the colony have prospered in petty business. Badli Industrial Area and the Patparganj Industrial Area are nearby. Small manufacturing activity in the cottage industry category is permitted in Jahangirpuri. Sonu appears to be an enterprising young man who has set up a small manufacturing unit and the photographs of the unit filed by his wife show us six machines installed by him. As noted above, he claims that he has two permanent labour employed by him to whom he pays wages in sum of ₹5,000/- per month and pays ₹20,000/- per month to a labour contractor who supplies him 4 to 6 labour each month as per his requirement. The wage bill gives us a clue to the extent of business turnover of Sonu. A person whose labour bill comes to ₹30,000/- per month would not be earning ₹14,000/- per month as claimed by Sonu.

17. Sonu has hidden his true income. He must suffer for the suppression. He has withheld his latest income tax returns.

18. Keeping in view the income tax returns filed by him and in light of the machinery deployed by Sonu and the number of workmen engaged by him the inference that the income tax returns do not truthfully reveals Sonu's income looms large in the realm of reality and thus we conclude that the monthly income generated by Sonu can under no circumstances be less than ₹40,000/- per month.

19. The learned Judge has fairly worked out Premlata's monthly expenses and since the law is that in a proceeding under Section 24 of the Hindu Marriage Act, 1955 the husband must pay to the wife such sum as she would need to maintain a lifestyle which she was maintaining during the consortium and as is being maintained by the husband after the couple fell apart, we conclude that monthly maintenance awarded to Premlata is sufficient and thus we dismiss both appeals but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

SEPTEMBER 14, 2016
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