

\$~12

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

MAT.APP. (F.C.) 53/2016

SANTOSH KUMAR

..... Appellant

Through: Mr. Lalit Kumar Laarn, Advocate.

versus

ANITA

..... Respondent

Through: Mr. Manjit Singh Chauhan, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

19.07.2016

%

1. The present appeal is directed against an order of the Family Court whereby the application by the respondent wife under Section 24 of the Hindu Marriage Act for *pendente lite* maintenance and litigation expenses was allowed and the appellant was directed to pay ₹4,000/- per month as *ad interim* maintenance.

2. The basic premise of the impugned judgment is that the materials on record disclose that the appellant was a daily wager - who did not appear to be forthcoming about his actual salary. The Family Court, therefore, on an assumption that he was entitled to at least the minimum wage prescribed for unskilled worker in Delhi, i.e., ₹10,000/- per month directed that ₹4,000/- should be paid to the respondent.

3. The appellant argues that the fixation of *ad interim* maintenance in the present case is not on the basis of any cogent material but on the basis of pure surmises. It is stated that the appellant does not have a steady income and is a daily wage. He had in the proceedings disclosed before the Family Court that he was originally employed in News Discovery, a national Hindi fortnightly magazine as a Helper at a salary of ₹2,500/- and that since the year 2010 that employment had ceased.

4. The discussion by the Family Court forming the basis for its assessment of the appellant's income is found in the following extract: -

“11. Neither any documentary proof has been placed on record in this regard by the applicant to lend assurance to the fact that applicant is working and earning as averred by the applicant. In the absence of which, it is absolutely difficult to believe if he has earnings as averred by the applicant.

12. On the other hand, according to non applicant, he was doing a private job in News Discovery (National Hindi Fortnightly Magazine) at Ashoka Enclave, Faridabad as Helper and was drawing a salary of Rs.2,500/- (Two Thousand Five Hundred) per month. He has further stated that since 2010, he could not continue with his private job.

13. No cogent reason whatsoever has been given by the non applicant as to why he has left his private job. It appears that he is making out his case in order to escape from his primary liability to make the payment to his wife and child and to maintain them. He is an able bodied person and no reason whatsoever can be assigned as to why he has not continued with his job.

14. In such a situation, there is no other option but to fall

back on Minimum Wages Act applicable for a person and according to which the non applicant may be earning about Rs.10,000/- (Ten Thousand) per month.

15. Therefore, taking into consideration the totality of the facts and circumstances and having considered the rival contentions, the income of the non applicant is assessed at Rs.10,000/- (Ten Thousand) per month.”

The Family Court was of the opinion that given the legal and moral duty of the husband to maintain his wife and minor child as per his capacity and to meet their day to day expenses including educational expenses, the quantum of maintenance that ought to be fixed in the circumstances of the case was ₹4,000/-.

5. This Court has considered the submissions. There is no doubt that the respondent was not in the position to show that the appellant was earning steady income; however, she had in fact urged that the appellant earned ₹20,000/- per month and that he was working as an Electrician. However, there was no material on record to suggest that these averments were correct. At the same time, the appellant asserted that he was earning ₹2,500/- per month - as a labourer which according to him came to an end in the year 2010. Since the appellant was under a duty to disclose the true nature of his income, the mere assertion that he was not in any steady employment since 2010 was not enough. The appellant admits that he was a daily wager but states that he cannot pay ₹4,000/-. Surely, he is in a position to disclose to the Court what can and could have been paid when the Family Court made its assessment.

6. In the circumstances, having regard to the state of materials and

documentary evidence on the record, the Trial Court in our opinion fairly assessed the income based on the capacity of the appellant as a daily wager who would not be earning less than wages prescribed for an unskilled labour in Delhi. This assessment cannot be termed unreasonable as to warrant appellate interference.

7. In view of the above discussion, the Court holds that this appeal is without merit and is accordingly dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

JULY 19, 2016

/vikas/