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

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Date of Decision: August 08, 2016

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MAT.APP.(F.C.) 35/2015

SUJIT KUMAR

..... Appellant

Represented by: Mr.Rajeev Kumar, Advocate

versus

VANDANA

..... Respondent

Represented by: Mr.Rajat Aneja, Amicus Curiae

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

CM No.5875/2015

1. For the reasons stated in the application, five days delay in filing of the appeal is condoned.
2. The application is disposed of.

MAT.APP.(F.C.) 35/2015

1. The appellant has been directed to pay maintenance to the respondent in the sum of ₹65,000/- per month. Its justification is: (i) ₹20,000/- per month for the respondent; and (ii) ₹ 15,000/- each for the three children born to the appellant and the respondent.
2. We have heard learned counsel for the parties and have perused the record.
3. The grievance of the appellant is that learned Trial Judge did not take into account the monthly EMIs paid by the appellant to the various banks

and financial institutions to whom motor vehicles have been pledged while availing the finance.

4. Indeed, the impugned order does not factor in said fact i.e. of the appellant paying monthly EMIs for the vehicle taken on finance by the appellant. But hastened to add that in para 15 of the impugned order the learned trial Judge has noted the said stand taken by the appellant.

5. The signature tune of the impugned order is that the appellant would be expected to earn at least ₹10,000/- per month from the twenty-one vehicles owned by the appellant.

6. The appellant is in the business of Tours & Travels. He does not dispute owning twenty-one vehicles. He claims that he has to repay EMIs each month.

7. We have perused the bank statement of accounts. Debit and credit entries are frequent. When all was fine the appellant was having eight LIC policies. He admits advancing loan in sum of ₹3,00,000/- and ₹1,00,000/- to friends as friendly loans without any interest being charged.

8. Monthly deposits in the banks range between ₹17,00,000/- to ₹76,00,000/- with huge cash withdrawals. The appellant justifies the cash withdrawal towards expenditure incurred on petrol, salary paid to the drivers, parking, toll-tax etc.

9. The appellant has not given cogent proof of exact amount which he pays to the bank and financial institutions towards EMIs. As per his oral statement total EMIs per month in sum of ₹2,60,000/-.

10. Considering the totality of the circumstances, we do not find any infirmity in the view taken by the learned Trial Judge that the appellant has a flourishing Tours & Travel business. He has twenty-one vehicles. Presumptive income of ₹10,000/- per month per vehicle is justified keeping

in view the monthly withdrawals which appellant makes and justifies as expenses incurred for petrol, salary to drivers, taxes and tolls. For example, in the month in which the appellant has withdrawn ₹77,00,000/- from the bank and claims having used said money to defray the expenses surely for twenty-one vehicles driven profit would be at least ₹5,00,000/- that month. To put it simply, huge cash withdrawals are being made to depress net income.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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: -

1. *Status of the parties.*
2. *Reasonable wants of the claimant.*
3. *The independent income and property of the claimant.*

4. *The number of persons, the non applicant has to maintain.*
5. *The amount should aid the applicant to live in a similar life style as he/she enjoyed in the matrimonial home.*
6. *Non-applicant's liabilities, if any.*
7. *Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.*
8. *Payment capacity of the non applicant.*
9. *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.*
10. *The non applicant to defray the cost of litigation.*
11. *The amount awarded u/s 125 Cr.PC is adjustable against the amount awarded u/ 24 of the Act.*
17. The appeal is dismissed but without any order as to costs.

CM No.5874/2015

Dismissed as infructuous.

**PRADEEP NANDRAJOG
(JUDGE)**

**PRATIBHA RANI
(JUDGE)**

AUGUST 08, 2016
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