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

% *Date of Decision: August 17, 2016*

+ **MAT.APP.(F.C.) 61/2016**

POONAM BHARDWAJ Appellant
Represented by: Mr.Jawahar Raja and
Mr.Abhey Narula, Advocates.

versus

ASHISH ABROL Respondent
Represented by: Mr.Sharat Kapoor and
Mr.C.B.Tiwari, Advocates.

AND

+ **MAT.APP.(F.C.) 73/2016**

ASHISH ABROL Appellant
Represented by: Mr.Sharat Kapoor and
Mr.C.B.Tiwari, Advocates.

versus

POONAM BHARDWAJ Respondent
Represented by: Mr.Jawahar Raja and
Mr.Abhey Narula, Advocates.

PRATIBHA RANI, J. (Oral)

1. An application under Section 24 of the Hindu Marriage Act was filed by Smt.Poonam Bhardwaj in HMA Petition No. 599/13 seeking dissolution of her marriage on the ground of cruelty and desertion by her husband Ashish Abrol.

2. The learned Judge, Family Court vide order dated March 18, 2016

awarded interim maintenance to the tune of ₹25,000/- per month to the applicant/wife apart from ₹25,000/- towards legal expenses.

3. Both the parties felt aggrieved by the order awarding maintenance to the tune of ₹25,000/- per month which resulted in filing of MAT.APP.(F.C.) 61/2016 by the wife and filing of MAT.APP.(F.C.) 73/2016 by the husband. We would hereinafter refer the parties as the 'husband' and 'wife'.

4. In MAT.APP.(F.C.) 73/2016 the grievance of the husband is that his wife is well off. She is running her own business having no dependent, the parties being issueless. He contended that his financial position is such that even for paying the salary to his employees and to meet expenses of the company he has to borrow the loan. His parents are old aged about 77 and 74 years and his mother though Director in the company is not getting any salary. His immovable assets are mortgaged with the bank. He has drawn a comparative chart of the rival claims of the parties in respect of their financial status. The husband has also stated that due to technical error that the affidavit was not signed by him he filed another affidavit. His review application is also pending before the learned Judge, Family Court but this appeal has been preferred so that his relief is not time barred. He has expressed his inability to pay ₹25,000/- per month as interim maintenance taking the plea that for past many years he is incurring loss in business. He claimed to have paid the legal expenses by cheque.

5. In MAT.APP.(F.C.) 61/2016 filed by the wife to show the financial status of her husband, she has referred to his immovable assets and the various transactions entered into by him running into crores of rupees. She claimed that the business she started, is running into losses. Though not disputing that she is well qualified and earlier earning handsome salary, she

claimed that she is entitled to the status and the standard of living as per the status of her husband and it is not necessary she must be absolutely destitute to seek maintenance. Her claim for maintenance from her husband is to the tune of ₹2,00,000/- per month from the date of application.

6. In view of the rival claims by the parties about their respective financial status, before we deal with the issue to ascertain whether ₹25,000/- per month awarded by the Family Court to the wife needs any interference by this Court, we are reminded of the observation made by the Supreme Court in the decision reported as 2010 (2) SCC 114 Dalip Singh vs. State of U.P. & Ors. extracted hereunder:

‘For many centuries, Indian society cherished two basic values of life i.e., ‘Satya’ (truth) and ‘Ahimsa’ (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.’

7. Perusal of the impugned order evinces that the wife has given the details of the salary she was earning right from the year 1993-1994 till 2009-2011. Though in the year 2008, she was getting ₹2,70,000/- per month in

the latter part she has claimed it to be ₹2,00,000/- per month. It is admitted case of the parties that after their marriage in the year 1999 they shifted to USA where the wife was working till 2008 and the husband was working till 2010. After returning to India both of them started their separate ventures. The wife is running her business under the name and style of Avant Learning Pvt. Ltd.

8. The claim of wife is that as per income tax return of the company run by her i.e. Avant Learning Pvt. Ltd. for the financial years 2012-2013 and 2013-2014 there was no income. Even as per the income tax return filed by her for the period 2011 to 2014, her income has come down to merely **₹7,896/- per month**. Thus, she claims of having virtually no income from her business.

9. As per the income affidavit of the husband he is an entrepreneur and his business has gone down in negative. His immovable assets are mortgaged. As per his income tax return for the assessment year 2013-2014 his monthly income is **₹9500/-** and loss to the tune of ₹18,56,962/-.

10. Thus, the income being claimed by both the parties is not even equivalent to the minimum wages payable to an unskilled/semi skilled worker. Undisputedly both the parties are residing in posh area i.e. the wife is residing in DLF, Phase-II, Gurgaon and husband is residing at C-4, Kailash Colony, Delhi. Both the parties are running their own business but unfortunately not revealing their true income. It has come on record and noted down correctly by the learned Judge, Family Court that they are investing in immovable properties. It is the case of the husband that he is paying huge amount towards EMIs and even to pay salaries of his employees he is borrowing from banks/financial institutions. This is a strange situation that he is not having money to pay the salary but paying

lakhs of rupees towards EMIs. Even the wife has also invested huge amount in immovable property. But when it comes to filing of income tax returns none of them disclosed the true income.

11. In MAT.APP.(F.C.) 73/2016 filed by the husband, to show the assets and liabilities the earning capacity of the parties the expenses they are incurring, he has compared the lifestyle of the two. While he has claimed that his wife is enjoying membership of various clubs, he has none. The wife is paying salary to her father as Director of the company but he is not paying any salary to his mother who is also Director of the company run by him. He also claimed that the wife is paying EMIs from her own resources but he is paying the EMIs by taking additional loans from the bank and financial institutions. The husband does not dispute owning two flats at C-4, Kailash Colony, New Delhi claiming one to be self occupied and other to be on rent fetching ₹1,15,000/- per month as rent and disputing about existence of third floor on the plea that third floor is not legally permitted on the terrace of the second floor.

12. We need not enter into this controversy about existence of third floor. The averments made in para 9.K. and 9.L. of the appeal filed by the husband are relevant for the purpose of disposal of these two appeals which are extracted as under:-

“9.K. Because the Ld. Family Court has also erred in the finding that income of the Appellant/Husband from rental is ₹1,15,000/- and the assessment of the Court of ₹2,00,000/- is not justified because the Appellant/Husband is paying as on date instalments of ₹5.04 lacs, against a rental income of ₹1,15,000/-. The accumulated losses in the company / business of the Appellant/Husband have increased from ₹55 lacs in 2014 to ₹2.13 Crores in 2016. Thus there is an error apparent in the assessment of the income of the Appellant/Husband, which is borne out from the records to be NIL instead of losses.

9.L. The Ld. Family Court erred to appreciate the fact that in the past two years the Appellant/Husband's financial position has deteriorated to the extent that he had to sell the mortgaged properties because he was finding it difficult to pay EMI's to the Bankers and also there was the looming fear of having to close down his business venture in which he had put in lot of hard labour and money. He however could not afford to close down his venture mid-way even after incurring heavy losses. In the past 5 years alone (after returning from the U.S. and without a job and running a loss making venture) he has paid instalments of approx 1.25 crores excluding losses incurred on his business venture. He shall have to continue to paying instalments to the Bankers for another 10-12 years to free himself of all liabilities."

13. He has also given justification for continuing with the business incurring heavy losses that he is in the hope that one day it would become profitable.

14. The legal position is well settled that no set formula can be set down for fixing the amount of maintenance for the reason that the parties do not reveal their true income and courts are left to do some guesswork. The factors to be taken into account while considering an application under Section 24 of the Hindu Marriage Act have been culled out in the case reported as 140 (2007) DLT 16 Sh.Bharat Hegde Vs. Smt.Saroj Hegde by one of us (Pradeep Nandrajog, J.) wherein the wife filed a petition seeking dissolution of marriage on the ground of cruelty and desertion. She also filed an application under Section 24 of the Hindu Marriage Act for awarding interim maintenance from her husband who was son of Ex-Chief Minister of the State of Karnataka. The husband claimed that he was unemployed with no source of income and was dependent on his parents.

15. On considering the social status of the husband, the wife Saroj Hegde was awarded interim maintenance of ₹25,000/- per month besides litigation

expenses to the tune of ₹25,000/-. The Court was of the view that it was difficult to believe that the husband had no requisite means to support his wife and pay interim maintenance.

16. In another case reported as 110 (2004) DLT 111 Radhika vs. Vineet Rungta, the issue how to deal with an application under Section 24 of Hindu Marriage Act, 1955 when both the parties are not coming with the true disclosure about their financial status and their income was considered and it was held as under:

“3. Cases where the parties disclose their actual income are extremely rare. Experience, Therefore, dictates that where a decision has to be taken pertaining to the claim for maintenance, and the quantum to be granted, the safer and surer method to be employed for coming to a realistic conclusion is to look at the status of the parties, since whilst incomes can be concealed, the status is palpably evident to all concerned. If any opulent lifestyle is enjoyed by warring spouses he should not be heard to complaint or plead that he has only a meagre income. If this approach had been followed, it would have been evident that the warring spouses enjoy a affluent lifestyle. It has already been noted that the learned Trial Court has not discussed the Husband's income. While granting maintenance it is incumbent on the Court to make such monetary arrangements as would be conducive to the spouses continuing a lifestyle to which they were accustomed before the matrimonial discord.”

17. We are of the considered opinion that taking into account the lifestyle enjoyed by the parties after their marriage in USA or even after shifting to India, the investments being made by them and the business they are running as on date separately, the income disclosed by them in their income tax return has rightly not been ‘swallowed’ by the learned Judge, Family Court. He has taken a conservative view of the situation where though enjoying a lavish lifestyle raising dispute over an interim maintenance of ₹25,000/- per

month.

18. We do not find any reason to interfere with the impugned order granting interim maintenance of ₹25,000/- per month to the wife.

19. Resultantly both the appeals are dismissed.

20. No costs.

PRATIBHA RANI
(JUDGE)

PRADEEP NANDRAJOG
(JUDGE)

AUGUST 17, 2016
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