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

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Date of Decision : August 24, 2016

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MAT.APP.(F.C.) 122/2016

VIKAS KOHLI

..... Appellant

Represented by: Mr.Sumeet Pushkarna, Advocate with
Mr.Sumit Chandra and Mr.Devesh
Kumar Malan, Advocates with
Appellant in person

versus

ABHA KOHLI

..... Respondent

Represented by: Mr.Shivam Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

Caveat No.745/2016

Since counsel as above appears for the caveator/respondent, the caveat is discharged.

CM No.30800/2016

Allowed subject to just exceptions.

Mat.App.(F.C.) No.122/2016

1. Application filed by the respondent under Section 24 of the Hindu Marriage Act, 1955 has been disposed of directing appellant to pay maintenance in sum of ₹1,00,000/- per month to the respondent as maintenance pendente lite from the date of the order.
2. Two children are with the respondent. They were born on June 07, 2000 and August 29, 2001. Both children are in school.

3. A perusal of the impugned order would reveal that after noting the backdrop facts which led to the dispute between the couple the learned Judge Family Court has noted the law on the subject as to how a claim for interim maintenance has to be dealt with. Thereafter, in para 11 the learned Judge has noted that as per the affidavit filed by the respondent she disclosed her salary from the year 2007 till August, 2013, which fluctuates between ₹40,000/- per month to ₹64,000/- per month. The learned Judge has noted that the respondent has invested in 4 systematic investment plans. She contributes premium of ₹2,000/- per month for each of the plan. She has a policy in the name of one son for which she pays premium of ₹13,000/- per month. She has a SBI life insurance policy towards which annual premium paid is ₹70,000/- per month. In para 12 the learned Judge has noted the expenses which the wife claims. In para 13 the learned Judge has noted the salary received by the husband which is ₹2,00,000/- per month. The learned Judge thereafter in paragraph 14 has noted the premiums paid by the husband to Life Insurance Corporation for various policies taken as also premium for medical benefits for the two children. Thereafter in paragraph 15 and 16 the learned Judge has deducted the gross income of the wife. In paragraph 17 and 18 the learned Judge has once again noted the salary of the husband. The judgment terminates in paragraph 20 as under:-

“In view of the foregoing discussion, respondent is directed to pay ₹1,00,000/- per month to the applicant and both the children towards maintenance pendente lite from the date of this order which includes the education and other expenses of children. As respondent was paying the school fees of both the children till today, so he is directed to pay ₹40,000/- to the petitioner from the date of filing of the application. Although applicant has not prayed for litigation expenses in the interim application but court deems fit to grant litigation expenses in

these type of cases. Therefore, non-applicant is directed to pay ₹25,000/- as litigation expenses to the applicant. The arrears be cleared in Six equal monthly instalments. Current maintenance be paid by 10th of each month till disposal of the petition and the same be credited in account of the applicant. Bank account details to be furnished by applicant to non-applicant within a week.”

4. Now, we do not find any discussion by the learned Judge as to how he has directed the husband to pay ₹1,00,000/- per month. Simply noting facts and figures without any analysis takes one nowhere. In paragraph 17 the learned Judge has noted that for the assessment year 2015-16 the gross income of the husband is ₹17,28,299/-. After deductions in sum of ₹1,68,129/-, net income translates to ₹15,60,170/-. It would be approximately ₹1,30,014/- per month. The premiums paid by the husband for the LIC policies and health insurance policies for the benefit of the children total ₹44,587.70. This would translate to about ₹3,500/- per month. This adjustment had to be given. Now, the impugned order does not record any other source of income of the parties. The impugned order would evince that both parties are living in a rented accommodation. The rent paid by the respondent is claimed to be ₹40,000/- per month. The rent claimed to be paid by the wife is ₹35,000/- per month.

5. Now, if in paragraph 17 the current income of the husband is accepted at ₹1,30,014/- per month and as per paragraph 11 the current income of the wife is assumed at ₹58,000/- per month, surely, a reader of the judgment would be compelled to hold that ₹1,00,000/- directed to be paid is a figure pulled out from the hat.

6. We are finding that in virtually 4 out of the 5 orders passed by the Family Courts there is no crystallization of what income is opined as being earned by the spouses and what outgoings are computed for the purposes of

deciding what is the net amount surplus in the hands of each spouse. Unless this exercise is done with clarity it becomes difficult for the Appellate Court to understand what was in the mind of the author of the order.

7. With consent of parties we set aside the impugned order dated June 03, 2016 and restore application filed by the respondent under Section 24 of the Hindu Marriage Act, 1955. The same shall be taken by the learned Judge Family Court on September 05, 2016. Fresh decision shall be pronounced by September 09, 2016. We would expect clarity in the order. The order would clearly indicate what monthly income from all sources is arrived by the learned Judge for both spouses. The order would clearly indicate what are the monthly outgoing towards premiums etc. which we find are for benefit of the children. Other amounts paid towards insurance for car or loans taken would be indicated. Net monthly surplus in the hands of the two spouses would be clearly identified. Thereafter giving reasons the amount which the wife would be entitled to as interim maintenance would be quantified. The learned Judge would be cognizant of the fact that claims for interim maintenance have to be allowed from the date of the application and not the date of the decision.

8. No costs.

CM No.30799/2016

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

AUGUST 24, 2016

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