

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

+ MAT.APP.(F.C.) 125/2014 & CM No. 17392/2014

Date of decision : 3rd February, 2016

SHALU

..... Appellant

Through: Mr. Ashwani Kumar Sood and
Col.S.K. Varma, Adv. with appellant

versus

SANDEEP SONI

..... Respondent

Through: Mr. N.U. Ahmed and
Mr. Jeewan Chandra, Adv. with
respondent and his mother

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT (ORAL)

GITA MITTAL, J

1. The present appeal has been filed assailing the order dated 22nd May, 2014 passed by the Principal Judge, Family Courts, Karkardooma Courts, Shahdara, Delhi dismissing the application of the appellant-wife under Section 24 of the Hindu Marriage Act, 1955 ('HMA' hereafter for brevity).

We have heard learned counsel for the parties. We have also perused the record of the trial court which has been placed before us.

2. The undisputed facts giving rise to the present petition are that both parties to the present appeal were divorcees at the time of their marriage on 27th June, 2010. The scale of the marriage can be

discerned from the admitted fact that the marriage was performed at the Richi Rich Banquet Hall on the Ring Road, Shalimar Bagh, New Delhi.

3. The appellant-wife claims that on 16th August, 2010, she was thrown out of the matrimonial home. On 5th September, 2012, the respondent-husband filed a petition under Section 13(1)(ia) & (ib) of the HMA seeking dissolution of the marriage of the parties by a decree of divorce.

4. The appellant has filed a written statement contesting the claim of the respondent. Apart from the written statement, on 14th December, 2012, the appellant-wife filed a petition under Section 24 of the HMA seeking grant of maintenance *pendente lite* and litigation expenses on the plea that she was unemployed and without a source of livelihood.

5. This application was contested by the respondent-husband by a reply dated 5th March, 2013. In this reply, the respondent took a blanket plea that he was under depression and was '*dependent on his parents*'. At the same time, he made a bald claim that the appellant-wife was a trained beautician and running a beauty parlour and earning more than ₹15,000/- per month; that the wife had employed two trained beauticians, to whom she was paying ₹6,000/- per month and that she did not need any maintenance.

6. This reply was supported by an affidavit of the husband of the same date. In the first column under '*personal information*', the respondent-husband had disclosed the particulars of past occupation as "*helping hand with father*". So far as members of the family

dependent on him is concerned, the respondent stated that *“there are three members in the family of father and all are dependent upon the father of the petitioner who is hardly earning Rs.7,000/- per month”*. The respondent-husband admitted that he was residing in the *“house of the mother”* and maintaining a *landline telephone no. “65391487”*. The respondent-husband also admitted that his father was doing the *“work of printing”*.

7. In the affidavit of income, assets and liabilities dated 28th May, 2013 (and notarized on 19th August, 2013) filed by her, the appellant-wife had staunchly disputed the assertion that she was running a beauty parlour. She disclosed that she was residing with her parents and married brother at 312/22, Durga Colony, Near Sonipat Stand, Rohtak (Haryana). The affidavit contained an unequivocal declaration that she was not employed and was not earning any amount. The appellant-wife had also disclosed that though she was a graduate but she had never been employed and that she had neither any independent source of income nor was having any assets in her name and that her parents were bearing all her expenses. These assertions were additionally supported in her additional affidavit dated 16th May, 2013.

8. In yet another affidavit dated 20th January, 2014 filed by the appellant-wife, she had disclosed the following :-

“3. That as per the knowledge and information the petitioner is running a business of printing press and publication house at Shahdara Delhi. He is owner of movable and immovable properties and has given some property on rent also, the detail of the same are

not in the possession of the deponent. But the reference of the said properties has been mentioned in para 6 and 7 of the affidavit by way of evidence dated 29.01.2013 filed by the father of the petitioner Shri Ram Swaroop Soni.

4. That the monthly income from all sources of the petitioner namely Sandeep Soni is more than Rs.60,000/- per month and nobody in his family dependent upon him.

5. That the petitioner himself admitted in his affidavit for assets and liability in column iv, the petitioner admitted that “he is helping hand with his father”. From the said affidavit it is crystal clear that the petitioner is involved in some kind of business which fact he has concealed in his reply to the application under Section 24 of Hindu Marriage Act. However the petitioner has admitted in his cross examination dated 19.08.2013 that “I used to work at my own printing press after my academic qualification was over”.

6. That the deponent is living on the mercy of her parents, she has no source of income and she is not running any beauty parlour named as Shalu Beauty Parlour or other business/work. The petitioner falsely stated that the deponent is running a beauty parlour in the name of Shalu Beauty Parlour against which an application U/s 340 Cr.P.C. is being filed.”

9. So far as her needs are concerned, the appellant-wife asserted that she required independent accommodation as well as expenditure. She had claimed maintenance @ ₹20,000/- per month in this affidavit which was filed in support of her petition under Section 24 of the HMA.

10. We may note that the record of the lower court is before us. These averments filed by the appellant-wife were neither disputed nor

challenged by the respondent. The respondent-husband also made no disclosure about the nature and fate of the printing press, which he had admittedly been running. He concealed its extent. Though the respondent-husband is admittedly living as a family with his parents, no disclosure is made about the assets of the family.

11. So far as respondent's contention that the appellant-wife was running a beauty parlour is concerned, on 10th October, 2013 the respondent-husband filed a photograph purporting to be of an alleged sign board of this business which reads as follows :-

“SHALLU BEAUTY PARLOUR
Shallu Prop.
8750809558
ONLY FOR LADIES
A/3 Flat No. 59, Manav Appartment, Paschim Vihar,
Delhi.
27.10.10”

12. The photograph mentions '27th October, 2010' as the date on which the photograph was allegedly taken.

13. The appellant-wife had filed on record before the Family Court, a certified copy of the husband's response to her application filed under Section 125 of the CrPC before the court in Rohtak, Haryana. In para 5 of the reply on merits, the respondent-husband had taken the following bald plea :-

“The applicant is having very good income from tuition work and serving in a private school and getting handsome salary and having interest income from the money deposited in the Bank.”

There is no reference to any beauty parlour or that the appellant

was a beautician.

14. The said application of the wife under Section 24 of the Hindu Marriage Act, 1955 was considered and rejected by the learned Trial Judge by the impugned order dated 22nd May, 2014 which order has been assailed before us by learned counsel for the appellant contending that the order fails to consider the material on record and has not returned any findings either with regard to the income of the husband, the need of the wife or her income. It is submitted that the impugned order is liable to be set aside in as much as it is premised solely on the above photograph purporting to be that of a sign board which was placed on record by the husband without anything more. It is urged by learned counsel for the appellant that the denial of the maintenance in the established facts and circumstances on record was completely unwarranted.

15. Our attention is also drawn to the orders dated 9th February, 2015; 12th May, 2015 and 22nd May, 2015 passed by this court in support of the submission that the respondent is concealing his income and business.

16. We find that it is rightly observed by the trial court that the wife would be entitled to be maintained in the same standard of living to which she was exposed in the matrimonial home. However, it has misdirected itself while considering the incomes of the parties.

17. Apart from the above assertions with regard to the employment and income of the husband, in the grounds of appeal before us, the appellant has stated the following :-

“G. That it is pertinent to mention herein that the

*three members of the family of the respondent are having their own house more than 80 yds. comprising on ground floor which is on rent and the rent may not be less than Rs.10,000/- per month. The first floor is self occupied comprising with three rooms, store, kitchen, second floor comprising with two rooms also given on rent. Apart from this in their occupation there is another 80 yds. adjoining house comprising with ground floor which is self occupied and doing the commercial activities on the name of Sony Publication, first floor already given on rent comprising three rooms, kitchen and the rent may not be less than Rs.10,000/-. They are doing the business under the name and style of R.S. Publication in the premises bearing no. 99, Panchsheel Garden, Naveen Shahdara, Delhi. When the appellant was thrown out on that time they were having 10 employees. The appellant was having Santro Car bearing no. DL 2CP-3401, one Bajaj Pulsar Motorcylce. Two AC's were also installed in the house the respondent was having **mobile no. 9810508351**. Apart from this there was **landline phone number 65391487**. It is apparent from the above said assets and activities the income of the respondent at present may be more than **Rs.1 lack per month**. Therefore, the appellant is entitled maintenance @ **Rs.20,000/- per month**. They have business of **printing at D-29, Jhilmil Industrial Area, Delhi-110095.**"*

(Emphasis by us)

Though, the respondent-husband has filed several pleadings, there is no denial to the above facts and circumstances.

18. The appellant has not disputed ownership of Santro Car or the motorcycle or air conditioners in their house. Before us, it is not disputed that two air-conditioners are installed in the house of the respondent-husband. It is, however, submitted by Mr. N.U. Ahmed,

learned counsel on instructions of the respondent who is present, that one of the two air-conditioners belonged to the appellant-wife and had been brought by her in marriage. Certainly, a family enjoying the use of two air-conditioners cannot be sustaining itself on a paltry income of ₹7,000/- per month as is being claimed.

19. Our attention is drawn to the statement of the respondent-husband in his cross-examination dated 19th August, 2013 before the trial judge, wherein the respondent has admitted that *“I used to work at my own printing press after my academic qualification was over”*. The respondent has thus clearly admitted that after completion of his academic education, he was self-employed and was running his own press. He has however concealed the name and style under which he was running this business, its extent and the earnings there from. We are also not informed as to what is the fate of this business.

20. We have carefully scrutinised the record of the Family Court and that of the present case. The husband is an able bodied young man of about 35 years as per his divorce petition. The wife has alleged that he was running a printing press. As against this assertion, the husband has submitted that he was *“dependent on his parents”*, that he was a *“helping hand with his father”*. We find that in para 4(iv) of the divorce petition, the husband has pleaded that the wife *“is feeling insecure herself in her matrimonial home as the business of petitioner has flopped and the petitioner is spreading his hands for money before his parents”*.

21. Our attention is drawn to the following deposition of Shri Ram Swarup Soni, in affidavit evidence dated 29th January, 2013 who

reiterates the stand of the husband about the husband's business and the wife's insecurity. Shri Ram Swarup Soni refers to the respondent's dependence upon him and his wife Shri Soni also states that *"any how the respondent pacified that after all the properties as well as money is of her and her husband as the petitioner is the only son of his parents as his sister is already married and is settled in her in-laws house and required nothing from them."*

22. The respondent and his family have clearly admitted/established family affluence, ownership of immoveable properties and monetary assets in their pleadings. In fact the main ground of cruelty alleged against the wife was that she had malafide intention towards the properties of the respondent's family. They have suppressed all documents including statutory returns like income tax and sales tax returns; ownership documents, bank account details etc which would be in their power and possession.

23. It is also writ large from the record that respondent husband is a business man who has not disclosed his real business or its extent, be it in the past or present as well as his assets.

24. In this regard, this court has already made observations in the orders dated 9th February, 2015; 12th May, 2015 and 22nd May, 2015 which speak for themselves. For the reasons of expediency, we set them down hereafter :-

“

09.02.2015

Before we finally hear this matter, let both the parties be present in Court on the next date. After hearing some arguments in this case, the impression gathered is that both the parties are trying to suppress their actual

income. In the appeal, the appellant has stated that respondent was having mobile no. 9810508351 and while addressing arguments Mr. Ashwani Kumar Sood, counsel for the appellant has admitted that the appellant is also having the facility of mobile. Let both the parties produce the phone bills of the said mobile numbers which they have been using from the past six months on the next date.

List on 14th April, 2015.”

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12.05.2015

Lawyers are abstaining from work today. Affidavit has been filed by the respondent in compliance of the direction given by this Court vide order dated 15.04.2015. Let copy of the affidavit filed by the respondent be furnished by counsel for the respondent to counsel for the appellant today itself. Today again, the respondent has absented himself. Mrs. Seema Soni, mother of the respondent, is however, present in Court. She states that her son (respondent herein) has been suffering from depression and, therefore, he was unable to present himself in Court today. Vide order dated 09.02.2015, a direction was given to both the parties to produce their respective phone bills of the mobile numbers which they have been using. In the said order, it was stated that both the parties have been trying to suppress their actual income and so much so that they have denied that they have been using any mobile connection. In the affidavit filed by the respondent, he has stated that he is not the subscriber of Mobile No. 9810508351 as the same does not stand in his name and also that it is a pre-paid connection. The respondent has further stated that in compliance of the order dated 09.02.2015, he has visited the office of Bharti Airtel and requested for supply of the call details in respect of the said mobile number, but he

could not succeed in his effort to obtain the call details of the said connection. As far as his absence on the last date of hearing is concerned, he has explained that he was down with fever due to which he could not appear in the matter. Along with the affidavit, he has also annexed the photocopy of medical certificate dated 19.04.2015. On perusal of the said certificate, we find that it has been issued by some Homeopathic Doctor and it does not reflect the medical condition/disease from which the respondent is allegedly suffering. Today, the appellant is present in Court and has seriously disputed the fact of the respondent not using the said mobile No. 9810508351. To test the veracity of the stand taken by the appellant and the stand taken by the respondent in his affidavit, we directed Mr.Manohal Lal, Court official to call the respondent on the said Mobile No. from his own mobile number. The said official has informed that after he dialled the said mobile number, the respondent himself picked up the phone, as he disclosed his name to him as Sandeep Soni and when he was enquired as to why he has not appeared in Court today, he replied by stating that he is not well and disconnected the phone immediately thereafter. Considering the fact that the respondent today has been contacted on his mobile No. 9810508351 by the Court official, it is quite apparent that the respondent has filed a false affidavit with the intention to mislead the Court. Looking into such conduct of the respondent it further becomes apparent that the respondent is deliberately not appearing in this matter. In the above circumstances, we direct the concerned SHO of Police Station Shahdara, Delhi to produce the respondent Sandeep Soni in Court on the next date of hearing. List this matter for further directions on 22.05.2015.”

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22.05.2015

Pursuant to the direction given by this Court vide order dated 12.05.2015 on the last date, the respondent is present in person in the matter. Before we finally hear the present appeal, let fresh affidavits be filed by both the parties in terms of the decisions given by this Court vide order dated 09.02.2015. We put a note of caution to both the parties present in Court that any wilful suppression made by them in their respective affidavit will result in grave consequences, which may include the initiation of contempt proceedings for perjury against them. The affidavit shall be filed by both the parties within a period of six weeks. We have already made certain observations with regard to the conduct of the respondent in our last order and on such conduct of the respondent, the Court would take a final view at the time of final hearing of the appeal. We also direct that both the parties shall remain present in Court on each and every date of hearing without committing any default. List this matter on 21.09.2015.”

(Underlining by us)

25. In the light of the appellant's categorical denial on affidavit that he is not maintaining the mobile no. 9810508351 and the above observations, it is obvious that the appellant has made false statements. The same is also supported by the fact that despite the directions by this court to file on affidavit the details of the user of the said phone, the appellant has deliberately not filed the same on record. He has taken again an evasive stand in the reply that he has filed before us.

26. We have noted the contradictory stand of the respondent with regard to ownership of the house on which he is residing with his

parents. At places, before the trial court in his cross examination dated 19th August, 2013, he has stated that the house is owned by the mother while at others, that the properties are owned by his father. The description of the properties has been concealed by the respondent-husband. The reasons therefore are manifest from the description contained in ground G set out above which establish the extent of assets and business, income and comfort whereof is being enjoyed by him even if it could be believed that ownership was not his.

27. It is writ large on the record that the husband lives as one unit with his parents as a single family of means and standing. The husband was admittedly in the printing business. Now a claim is set up that it is his father who is doing such business. Not a single document has been filed to support either plea.

28. While vaguely asserting that he was a helping hand with his father; the respondent fails to disclose the particulars of the business of his father, its extent or even its address.

29. It is evident from the above that given the fact that the mother of the respondent is unemployed and a housewife. The property, even if it is in her name has been acquired out of the earnings of the business. Clearly, the business, if any, which has been disclosed by the respondent is either his individual business or is in the nature of a family business.

30. If not owned by him, all the assets belong to the respondent's family. The family consists of only his parents & himself. His only sister is married. Therefore, they are using as well as reaping the

rental income and other income from the properties.

In a pronouncement of this court reported at *AIR 1987 Delhi 43 Smt. Renu Jain v. Mahavir Prashad Jain*, it was held that the court would be entitled to deduce the amount of maintenance and income of the husband considering the joint family property, its business and social status.

31. Further, in a pronouncement reported at *(1997) 7 SCC 7 Jasbir Kaur Sehgal v. District Judge, Dehradun & Ors* due to lack of proper income information furnished by the husband, the Supreme Court was compelled to draw an adverse inference against him. It has been held as follows:

“7. ... The husband has not filed any certificate of his salary from his present employer though the wife has contended that both the firms, Mukul Overseas Pvt. Ltd. and Mukul International Pvt. Ltd. are owned by the husband himself which fact the husband has denied. Though we are not concerned with the income of his son which is stated to be Rs 7500 per month, it would have been better if the husband had given complete details as to the perquisites enjoyed by his son, the rent he is paying for his rented accommodation at Safdarjung Enclave and the like. The claim of the husband that though his house in NOIDA fell vacant in January 1996, it has neither been further let nor is the husband himself living there because of certain repairs and on that account he is residing with his son does not appeal to us. It does appear to us from the affidavit of the husband that it conceals more than what it tells of his income and other assets. Attempt has been made to conceal his true income and that leads us to draw an adverse inference against the husband about his income that it is much more than what is being disclosed to us. The claim of the husband that from an income of Rs

4750 per month which he is getting from Mukul International Pvt. Ltd. he has to maintain himself, his two sons and daughter is absurd particularly when the eldest son is earning more than the husband and it is the husband who is living with him. The husband has also not disclosed retiral benefits, if any, from ONGC and the amount of provident fund he obtained from there. The husband has interest income from the Unit Trust of India and also from the fixed deposit receipts but again he has not disclosed the number of units he is holding and the amount of the fixed deposits in his name. From all this we have to hold that the annual income of the respondent-husband is even on a modest estimate to be Rs 2,40,000 annually which would come to Rs 20,000 per month. Considering the diverse claims made by the parties, one inflating the income and the other suppressing, an element of conjecture and guesswork does enter for arriving at the income of the husband. It cannot be done by any mathematical precision.”

(Underlining by us)

32. It is well settled that irrespective of the onus or the burden of proof, a party in possession of the best evidence, is bound to produce the same on record. In this regard, we may advert to the pronouncement of the Privy Council reported at ***AIR 1917 PC 6 T.S. Murugesam Pillai v. Manickavasaka Pandara*** which reads as follows:

“A practice has grown up in Indian procedure of those in possession of important documents or information lying by, trusting to the abstract doctrine of the onus of proof and failing accordingly to furnish to the Courts the best material for its decision. With regard to third parties, this may be right enough: they have no responsibility for the conduct of suit; but with regard to

the parties to the suit it is, in their Lordships' opinion, an inversion of sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the written evidence in their possession which would throw light upon the proposition.”

33. This principle was reiterated by the Supreme Court in a pronouncement reported at *AIR 1968 SC 1413 Gopal Krishna Ketkar v. Mohamed Haji Latif*, wherein it was held thus:

“Even if the burden of proof does not lie on a party the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof.”

34. In a pronouncement reported at *(1988) 1 SCC 626 National Insurance Co. Ltd., New Delhi v. Jugal Kishore & Ors* it was observed by the Supreme Court that it had consistently emphasised that it was the duty of the party which was in possession of a document which would be helpful in doing justice, to produce that document and that such party should not be permitted to take shelter behind the doctrine of burden of proof.

Who but the person concerned would have evidence and information regarding his employment/business, assets and income.

35. The respondent is undoubtedly guilty of suppression of material facts with regard to his income from this court. He has further made

wrong statements on affidavit with regard to the income of the appellant.

As a result, an adverse inference has to be drawn against the respondent-husband with regard to his income, assets and properties.

36. In view of the above, we have no hesitation in concluding that the respondent would be earning, if not ₹60,000/- as urged by the wife, at least ₹30,000/- to enable him to maintain two air-conditioners, a car, a motorcycle, mobile phone, landline phone and to be residing in a three storey floor. Rental income is derived from the floors of his house as well as the adjacent property which is rented out for commercial use as well as his/or the family business would be required to be added to his sources of income.

37. So far as the income of the appellant is concerned, she has categorically stated that she was unemployed and was fully dependent on her father.

38. It is necessary to undertake an examination of the plea of the husband that the appellant wife was running the beauty parlour in the premises no. A/3, Flat No.-59, Manav Apartment, Paschim Vihar, Delhi; and employing two full time beauticians to whom she was paying a salary of ₹6,000/- each. In support thereof, the respondent-husband has relied on the photograph aforementioned.

39. In support of the challenge to this assertion, learned counsel for the appellant has drawn our attention to the certificate dated 14th August, 2014 issued by the Baljit Nagar Pursharthi Co-operative Group Housing Society Ltd., owning Manav Apartment wherein the subject property is located, clearly certifying that there was no beauty

parlour in Flat No. 59 in Manav Apartments at any point of time. The society has categorically certified that no commercial activity is permitted in any flat of a society and that the said flat has never been utilised for any commercial purpose. The appellant has placed before us photographs of the interiors of the said flat which supports the certificate.

40. Apart from the bald submission that the wife was running a beauty parlour in support of which the photograph was filed, no documentary evidence was placed on record. We find that only a board is shown in the photograph filed by the husband. The photograph does not contain any image of the place or the building on which such board is allegedly installed. Other than the contents which include the name of the wife, address and a phone number, there is nothing in the photograph which can connect it, either with the wife or to the address premises wherein she or her family has any interest.

41. The respondent has staunchly relied upon the photograph of the sign board before us in support of the plea that the appellant is running a beauty parlour. As noted above the photo purports to have been taken on 27th October, 2010 and mentions the phone no. 8750809558 as that of the parlour. The appellant has placed before us an e-mail received from Sh. Shrikant Howale, Customer Service Team of the Idea Limited which states that the mobile no. 8750809558 was activated in favour of Sh. Kashmiri Lal with effect from 22nd May, 2011. It is evident, therefore, that the photograph dated 27th October, 2010 setting out this phone number is a document which has been fabricated by the respondent merely to support a false

plea that the appellant was running a beauty parlour.

42. Therefore, the findings of the learned Family Court that the wife was running a beauty parlour is devoid of any factual or legal basis.

43. It is noteworthy that the respondent-husband seeks dissolution of the marriage of the parties not only on the ground of cruelty but on the ground of desertion as well, In order to support the plea of *animus deserendi*, the plea that she has established a beauty parlour would have been a natural and maternal assertion. There is no mention at all of any such fact in the petition filed by the husband under Section 13 of the HMA.

44. We also find that in opposition to the maintenance petition under Section 125 of the CrPC (filed before the court at Rohtak, Haryana), the respondent had taken the false plea that the '*appellant was serving in a private school, getting a handsome salary, having interest income from many deposits in the bank and having a very good income from tuition work*'. These engagements were in Rohtak where the appellant was admittedly residing with her parents. It is obvious that any of these engagements would have prevented the appellant from running a beauty parlour in Paschim Vihar in Delhi. Clearly, the respondent-husband has made false allegations of running a beauty parlour merely to defeat the entitlement of the appellant to maintenance.

45. Before us, another claim has been made that the respondent is depressed. The respondent has been in court on all dates of hearing and has been giving instructions to the counsel representing him.

There is not a whit of material to support this plea of depression in the nature of medical consultation, prescription or medical bills. It is obvious that plea of depression has been set up as an excuse to press unemployment to deprive the appellant from maintenance.

46. We may note that Smt. Seema Soni, mother of the respondent has also been present in court and is actively pursuing the litigation on behalf of her son.

47. Further, as noted above the husband is an able bodied young man of about 35 years (as per his divorce petition). In a pronouncement reported at **(2015) 5 SCC 705 Shamima Farooqui v. Shahid Khan** the Supreme Court has held that *“it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.”*

48. In this regard reference can also be made to the judgment rendered by this court in **AIR 1968 Del 174 Chander Parkash v. Shrimati Shila Rani** wherein it was held as follows:

“7. ... an able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. In the present case, as the husband has not frankly disclosed to the Court, as he ought, his allowances which he admittedly gets, the presumption would be easily permissible against him.”

(Underlining by us)

49. There is no dispute to the marriage of the parties and that the appellant-wife is living separately. No facts have been pleaded which would disentitle her to maintenance. It needs no elaboration that an unemployed wife is entitled to be maintained in the same standard in which she was residing while she was living with her husband. The husband is living in a joint family with his parents in a three room house.

50. It is trite that maintenance is not a bare sustenance and its constituents would include reasonable expenses of accommodation, food, social obligations, transportation, medication, toiletries, clothing etc. which would enable the applicant/spouse to live in the same standard of living to which she was accustomed while living in the matrimonial home. The wife in the instant case is residing in Sonapat with her parents. She is entitled to independent residence and protection of privacy.

51. We are not aware of the cost of renting a premises in Sonapat or the cost of living which would enable the appellant-wife to live in the same standard as the respondent/husband.

52. On account of the concealment by the husband, we have been compelled to estimate the income of the husband. The present order is based on a reasonable estimation of his income. Needless to say that it shall be open for the parties to place the material in support of their contentions and to seek modification, if so necessary.

53. In the above circumstances, the appellant-wife would be

entitled to all reasonable expenses of residence, food, medication etc. Keeping in view this assessment and deduction of the income of the respondent-husband, we are of the view that the appellant deserves to have been awarded maintenance @ ₹15,000/- per month with effect from 14th December, 2012 when she had filed the application under Section 24 of the HMA.

54. The appellant is also entitled to reasonable expenses of litigation, both before the trial court as well as of the present appeal. The appellant would be paid a sum of ₹25,000/- towards the litigation expenses of HMA No. 398/2014. In addition, she would be entitled to travelling costs of ₹1,000/- for every date on which she attends the trial court.

55. The appellant would be additionally entitled to litigation expenses of ₹15,000/- for the present appeal. In addition, she would be entitled to reasonable travelling costs of travel from Sonapat to Delhi to attend the court on every date which would be at the rate of ₹1,500/-.

56. We are informed that the appellant is maintaining Saving Bank A/c No. 5542500100340401 at Karnataka Bank Ltd., Block A-4, Paschim Vihar Branch, New Delhi. It is directed that the monthly maintenance shall be paid to the appellant by RTGS transfer into the said saving bank account on or before the 10th day of each English calendar month. So far as the arrears of maintenance are concerned, the same shall be paid in monthly instalments of ₹15,000/- each, commencing from 1st April, 2016.

57. At this stage, learned counsel for the respondent submits that

the quantum of maintenance may be reduced. On his request, it is directed that the respondent shall pay the maintenance @ ₹10,000/-.

58. A direction is issued to the learned Trial Judge to consider the pending application under Section 340 of the CrPC dated 20th January, 2014 and to pass orders thereon forthwith before proceeding in the matter.

This appeal is allowed in the above terms.

GITA MITTAL, J

I.S.MEHTA, J

FEBRUARY 03, 2016

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