

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

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Date of Decision: August 23, 2016

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MAT.APP.(F.C.) 132/2014

KANDULA SUBRAMANIAM

..... Appellant

Represented by: Mr.Arun Monga, Mr.Suryajyoti
Singh Paul and Ms.Kudnat
Sandhu, Advocates.

versus

KRISHNAKOLI DATTA

..... Respondent

Represented by: Ms.Mala Narayan and
Mr.Raghav Shekhar,
Advocates.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. The appellant/husband is aggrieved by the order dated August 26, 2013 whereby he has been directed to pay ₹23,000/- per month towards maintenance of the child of the parties and also ₹1,08,000/- as 1/3rd share in the admission charges of ₹3,24,000/- of their child in regular school.

2. It is admitted case of the parties that they got married on April 22, 1999. They were blessed with a son on March 07, 2008. The parties are living separately since February, 2010. The appellant/husband and respondent/wife jointly owned two flats, one in Ridgewood Estate, DLF Phase IV, Gurgaon Haryana) where appellant/husband is residing and one in Iris Row, Vatika City Sohna Road, Gurgaon (Haryana) where

respondent/wife along with their son is residing. The appellant/husband filed HMA Petition No.471/2014 seeking dissolution of marriage. The respondent/wife filed an application under Section 24 of the Hindu Marriage Act, 1955 to seek maintenance of their only son who was aged about 6 years at the time of passing the impugned order. In the application, the respondent/wife prayed for direction to the appellant/husband to pay a sum of ₹1,62,000/- as his half share for getting the child admitted in a good school and thereafter to pay ₹35,000/- per month for his maintenance as well ₹1,00,000/- towards litigation expenses.

3. We may simply note here that for purpose of seeking maintenance of the minor child, the provision applicable is under Section 26 of Hindu Marriage Act, 1955 and not under Section 24 of the Act as mentioned by the parties and learned Principal Judge, Family Court.

4. Vide impugned order in para 4 & 5 the learned Principal Judge, Family Court has noted the income of the parties and divided the share of the parents as under:

‘4. Both the parties have filed their detailed affidavits along with documents. The petitioner in her affidavit has shown her income as ₹2,63,429/- per month net of TDS as of 31.03.2013. There are other miscellaneous incomes also like interest and dividend etc. On the other hand, the respondent has shown his income as ₹1,23,750/- net of TDA. He has not shown any other income. Both the parties have also mentioned regarding investments, instalment of loans, other assets and liabilities in their respective affidavits. After going through affidavits of both the parties, the following can be safely assumed:-

(i) Both the parties belong to upper middle class and are enjoying luxurious living style.

(ii) The income of the petitioner/applicant is more than double of the income of the respondent.

5. So in my view the expenses of the child are to be borne in the ratio of 2:1 by the petitioner and the respondent respectively.'

5. After noting as above, he directed the appellant/husband to pay ₹1,08,000/- towards his share for admission of the child in regular school and then estimating the monthly expenses of the minor child to be ₹70,000/- per month, directed the appellant/husband to pay ₹23,000/- per month in the ratio of 2:1 i.e. two parts of the expenses to be borne by mother and one part to be borne by father in view of their respective incomes.

6. Learned counsel for the appellant/husband has submitted that the learned Principal Judge, Family Court has wrongly assessed the monthly disposable income of the appellant/husband to be ₹1,23,750/- whereas after deduction of compulsory income tax which comes out to ₹1,10,003/-. He has further submitted that in view of his medical condition, it is obligatory to him to employ a driver and pay his salary as well maintenance of car and cost of treatment. Conversely the monthly disposable income of the respondent/wife is ₹3,55,473/ per month. The learned Principal Judge, Family Court proceeded on wrong assumption while calculating monthly disposable income of his wife as ₹2,63,429/-. It has been further submitted that he had been voluntarily offering to contribute ₹10,000/- per month for the child expenses which has been declined by the respondent/wife and when he tried to contribute by sending the cheque to her she did not get the same encashed. The contention of the appellant is that the two spouses should be similarly and equally placed on their own financial needs and while the wife would be left with sufficient amount in her hand to meet her requirements, the appellant/husband would be left only with ₹55,000/- to meet his requirements. It has been strenuously argued on behalf of the appellant/husband that he is a cancer survivor with many liabilities including

cost of treatment as he has also developed heart problem and had spent about ₹ 2 lacs for investigations since 2014. He has been to undergo Coronary Artery Bypass Surgery and pre-surgery tests, entailing heavy expenses of about ₹10 lakhs.

7. We have perused the record. The learned Principal Judge, Family Court while disposing of the application seeking maintenance for the minor child, has taken into consideration the income of the spouses. Taking into consideration that the appellant/husband is earning less than the respondent/wife, he has been directed to share 1/3rd of the financial burden to maintain the child.

8. It has come on record that both the parties are staying in the flats jointly owned by them and they do not have to incur any liability towards payment of rent. The child was just six years old at the time when this application under Section 24 of the Hindu Marriage Act was disposed of and estimating monthly expenses of a child aged about six years to be ₹70,000/- as claimed by the respondent/wife appears to be exaggerated and not reasonable. The learned Principal Judge, Family Court though required to consider the income of the spouses for purpose of awarding the maintenance, should have considered approximate monthly expenses of a six year old child and even considering the total income of both parents could not have estimated the sum to be ₹70,000/- required for his maintenance so as to fixing 1/3rd share of the appellant/husband to be ₹23,000/-.

9. In the decision reported as (2000) 4 SCC 266 Padmja Sharma vs. Ratan Lal Sharma the Apex Court has observed that both the parties are bound to contribute for the maintenance of the child. In para 10 to 12 of the report, it was held as under:

'10. Maintenance has not been defined in the Act or between the parents whose duty it is to maintain the children. Hindu Marriage Act, 1955, Hindu Minority and Guardianship Act, 1956, Hindu Adoptions and Maintenance Act, 1956 and Hindu Succession Act, 1956 constitute a law in a coded form for the Hindus. Unless there is anything repugnant to the context definition of a particular word could be lifted from any of the four Acts constituting the law to interpret a certain provision. All these Acts are to be read in conjunction with one another and interpreted accordingly. We can, therefore go to Hindu Adoptions and Maintenance Act, 1956 (for short the 'Maintenance Act') to understand the meaning of the 'maintenance'. In Clause (b) of Section 3 of this Act "maintenance includes (i) in all cases, provisions for food, clothing residence, education and medical attendance and treatment; (ii) in the case of an unmarried daughter also the reasonable expenses of and incident to her marriage." and under Clause (c) "minor means a person who has not completed his or her age of eighteen years," Under Section 18 of Maintenance Act a Hindu wife shall be entitled to be maintained by her husband during her life time. This is of course subject to certain conditions with which we are not concerned. Section 20² provides for maintenance of children and aged parents. Under this Section a Hindu is bound, during his or her life time, to maintain his or her children. A minor child so long as he is minor can claim maintenance from his or her father or mother. Section 20 is, therefore, to be contrasted with Section 18. Under this Section it is as much the obligation of the father to maintain a minor child as that of the mother. It is not the law that how affluent mother may be it is the obligation only of the father to maintain the minor.

11. In the present case both the parents are employed. If we refer to the first application filed under Section 26 of the Act by the wife she mentioned that she is getting a salary of Rs. 3,100/- per month and husband is getting a salary of Rs. 5.850/- per month. She is therefore, also obliged to contribute in the maintenance of the children. Salaries of both the parents have since increased with the course of time. We believe that in the same proportion, may be perhaps in the case of an employee of Reserve Bank of India at somewhat higher rate. If we take

approximate salary of husband is twice as much as that of the wife, they are bound to contribute for maintenance of their children in that proportion. Family Court has already fixed a sum of Rs. 250/- per month for each of the child under Section 125 of the Code. That amount we need not touch.

12. Considering the overall picture in the present case we are of the view that a sum of Rs. 3,000/- per month for each of the child would be sufficient to maintain him, which shall be borne by both the parent in the proportion of 2:1’

10. Though not specifically noted in the impugned order, the learned Principal Judge, Family Court has followed the principles laid down in Padmja Sharma vs. Ratan Lal Sharma’s case (Supra).

11. Taking into consideration the age of the child as on date i.e. about 8 years, even as per the financial status of the parties, his reasonable monthly expenses required to enjoy that status may not exceed ₹45,000/- per month. This brings down the share of the appellant/husband to ₹15,000/- per month. He has already been offering ₹10,000/- per month for the maintenance of the child which was not acceptable to the respondent/wife and by parting with ₹15,000/- per month as 1/3rd share he is left with sufficient means and take care of his cost of treatment which is higher in his case as he claims to be cancer survivor and now a heart patient with problem in his vision.

12. Thus, the appellant/husband is directed to pay ₹15,000/- from the date of application as 1/3rd share towards maintenance of the child.

13. So far as the claim of the respondent/wife of ₹3,24,000/-, as detailed in paras 7 and 14 of the application seeking maintenance, towards admission charges of the child in the school is concerned, on furnishing the receipts before the learned Principal Judge, Family Court of actual expenses incurred by her for admission of the child in school, the appellant/husband shall bear and pay 1/3rd of such expenses subject to adjustment of payment, if any,

already made in this regard.

14. With above observations the appeal is disposed of.

15. No costs.

PRATIBHA RANI
(JUDGE)

PRADEEP NANDRAJOG
(JUDGE)

AUGUST 23, 2016
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