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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: September 14, 2016

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MAT.APP.(F.C.) 150/2014

ARUN KUMAR TETRI

..... Appellant

Represented by: Dr.(Maj) J.C.Vashisth &
Mr.A.K.Sood, Advocates with
appellant and his father in
person

versus

VANDNA ARORA & ANR

..... Respondents

Represented by: Mr.Jagat Singh & Ms.Ellis
J.Ahuja, Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J. (Oral)

CM No.27046/2016 (exemption)

Allowed subject to all just exceptions.

CM No.20058/2014 (Stay) & CM No.2350/2015 (reconsideration/
amendment of the order dated December 09, 2014)

Since the appeal has been heard and is being disposed of today itself
these applications are dismissed as not pressed.

CM No.27045/2016

1. This application dated July 23, 2016 has been filed with the grievance
that the presence of the parties have not been correctly recorded on May 13,

2016.

2. The request of appellant is allowed to the extent that the appearance in the proceedings dated May 13, 2016 on behalf of the appellant shall be read as Dr.(Maj) J.C.Vashista, Mr.A.K.Sood & Ms.Rekha Tiwari, Advocates with appellant.

3. So far as his grievance in recording presence on behalf of the respondent as mentioned in para No.6 of the application is concerned, the same not being objected by the respondent, no correction is required.

4. The application is disposed of.

MAT.APP.(F.C.) 150/2014

1. The appellant/husband is aggrieved by the order dated October 20, 2014 whereby the learned Judge Family Court while disposing of the application under Section 24 of the Hindu Marriage Act filed by the respondent/wife, directed him to pay ₹29,750/- per month as interim maintenance.

2. Solemnization of the marriage on December 09, 2009 and relationship of the husband and wife between the parties as well birth of a daughter on September 13, 2010 is admitted by the parties.

3. Both the parties are gainfully employed. While the appellant/husband is working as Debt Manager with ICICI Bank, the respondent/wife is employed as TGT in a school run by the Government of NCT of Delhi.

4. Both the parties have placed on record their respective salary slips. Both the parties have referred to their respective salary slips showing their gross salary and net salary after compulsory deductions.

5. Learned counsel for the appellant has submitted that to comply with the order dated December 09, 2014 by this Court directing him to pay a sum of ₹5 lakhs in three equated monthly instalments and to continue paying

₹20,000/- per month to the respondent, the appellant had to take a personal loan of ₹4 lakhs from ICICI Bank. He is repaying the said loan in 30 EMI's of ₹15782/- per month. He is also paying ₹20,000/- as directed by the Court and had also incurred expenses on the admission of the daughter in different schools.

6. On behalf of the respondent/wife it has been contended that the deductions towards GPF are more than statutory as can be gathered from his salary slips. It has also been disputed that loan has been taken by the appellant to clear the arrears of maintenance. Learned counsel for the respondent/wife submitted that taking into consideration that the monthly expense of their daughter is about ₹40,000/-, the maintenance amount awarded by the learned Judge Family Court i.e. ₹29,750/- is justified.

7. Vide impugned order dated October 20, 2014, learned Judge Family Court determined the amount of interim maintenance observing as under:-

“7. On behalf of the respondent it has been submitted that ₹40,000/- per month is required for maintenance for respondent and her child. A comparative chart of monthly income of both the parties has been filed. The income of the petitioner has been shown at ₹79,000/- and income of the respondent has been shown at ₹39,000/-. Although the petitioner has claimed that he is looking after medical needs of his old parents and respondent is claiming that she has no house of her own but in my view since medical expenses of parents of the petitioner are covered from the government so medical needs of parents of the petitioner are presumed to be taken care of by government. The respondent is living in the house of his mother, so the present application is decided without taking into consideration these two grounds. Income of the petitioner and the respondent are taken at ₹79,000/- and ₹39,000/- for the purpose of

deciding the present application.

8. *In my view, income of the petitioner is to be divided in four equal parts; out of which two parts are to be kept by him being the earning member and so he is entitled to keep ₹39,500/- per month and remaining income is to be shared by the respondent and minor child being ₹19,750/- per month for each of them. Similarly income of ₹39,000/- of the respondent is to be divided in four equal parts; out of which two parts amounting to ₹19,500/- are to be kept by the respondent and one part each is to be shared by the petitioner and the minor child being ₹9750/- each. If these figures are added then petitioner is entitled to have ₹49,250/- out of ₹79,000/- being earned by him, so he is liable to pay ₹29,750/- to the respondent as maintenance for the respondent and the minor child.”*

8. The claim of respondent/wife that the monthly expenditure of the child is ₹40,000/- per month seems to be exaggerated for the obvious reasons that a mother claiming her net salary to be ₹39,000/- per month is not expected to spend ₹40,000/- per month on education of 5/6 years old child.

9. The appellant/husband has given the details of paying the educational expenses, admission charges of the daughter repeatedly as the respondent/wife had been changing her school. As per the appellant/husband the child was first admitted in Little Millenium School with a student-teacher ratio 15:1 with air conditioned classrooms within close proximity of their residence. Thereafter, she was admitted in another nursery school i.e. ASN School and again shifted to Ahlcon Public School within a short time without his knowledge.

10. The appellant/husband is not shying away from his responsibility to

support their daughter which can be gathered from the expenses borne by him in connection with her admission in different schools.

11. The respondent/wife being a TGT in Government School, recommendations of 7th Central Pay Commission being applicable to her, her salary must have stand revised but the latest salary slip/her emoluments after the revision of pay scale has not been placed on record.

12. Without going into the merits about the deductions towards GPF by the husband are voluntary or statutory, the fact remains that the gross salary of the appellant/husband as on date and pleaded in the appeal is more than ₹76,000/- (₹76,737/-) and pre-revised salary of respondent/wife in August, 2015 was more than ₹50,000/- (₹50283/-)

13. In the decision reported as (2000) 4 SCC 266 Padmja Sharma Vs. Ratan Lal Sharma, the Supreme Court has dealt with the concept of maintenance as well the duty of the working spouses to maintain the children. In para No.10 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 20 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."

14. Reverting to the case in hand since both the parents of the minor daughter are employed, both are obliged to contribute towards the maintenance of the child.

15. Considering the overall financial status of the parties, we are of the opinion that as directed by this Court on December 09, 2014, ₹20,000/- per month shall be paid by the appellant/husband towards the maintenance of the daughter which shall be subject to adjustment of any maintenance being awarded in any other proceedings between the parties.

16. While disposing of this appeal and taking into consideration that 7th Central Pay Commission is applicable to respondent/wife but not to the appellant/husband who is working as Debt Manager with ICICI Bank, the appellant/husband is at liberty to approach the Family Court seeking modification of the interim maintenance awarded vide this order,

highlighting the current financial status of the parties.

17. The appeal is allowed to the above extent.

**PRATIBHA RANI
(JUDGE)**

**PRADEEP NANDRAJOG
(JUDGE)**

SEPTEMBER 14, 2016
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