$~11

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

% *Date of Decision : September 26, 2016*

\+ **MAT.APP.(F.C.) 141/2016**

NITIN BHATIA ..... Appellant
Represented by: Mr.Ajay Kumar, Advocate

versus

NIDHI KALANI ..... Respondent
Represented by: None

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

CM No.35326/2016

Allowed subject to just exceptions.

Mat.App.(F.C.) No.141/2016

1. The appellant does not dispute that the income of his wife computed by the learned Judge Family Court is correct. Gross salary is ₹16,700/- and after deductions monthly take home salary of the wife is ₹15,000/-. She earns ₹5,000/- per month from interest on bank deposits.

2. The question is : whether appellant's income has been rightly computed.

3. The appellant states that since he did not have a taxable income, he was not filing income tax returns.

4. The appellant does not dispute that he has two accounts bearing No.913010020317560 and 680053134143 with Axis Bank in which cash

deposits have been made in the year 2013, 2014 and 2015 totalling ₹4,71,200/- and 4,13,000/-. This translates to cash deposits per month in sum of ₹73,683.33.

5. As per the impugned order, surprisingly the cash deposits have vanished after the dispute between the parties surfaced.

6. Appellant's contention that he was earning ₹5,000/- per month has rightly been negated by the learned Judge Family Court. As held in para 22 of the impugned order, no father would marry a daughter who earns about ₹16,000/- per month to a boy who earns ₹5,000/- per month.

7. The status of the parties has rightly been captured by the learned Judge Family Court with reference to the fact that the girl's family hosted the baraat at Grand Milan Banquets, Angel Mall, Kaushambi, Sahibabad.

8. Contention of the appellant that his father had been making the cash deposits in his account to pay a loan taken by him has rightly been rejected by the learned Judge Family Court on account of the reason no document evincing a loan taken by the father has been filed and income tax returns of the father has not been filed.

9. The object behind Section 24 of the Hindu Marriage Act, 1955 is to provide for maintenance, pendente-lite, to a spouse in matrimonial proceedings so that during the pendency of the proceedings the spouse can maintain herself/himself and also have sufficient funds to carry on the litigation so that the spouse does not unduly suffer in the conduct of the case for want of funds.

10. A spouse unable to maintain himself/herself is entitled to maintenance on the principle of equi-status and respect that the spouse would have enjoyed if he/she continued to live with other spouse.

11. The provisions of Section 24 are beneficent in nature and the power

is exercised by the Court not only out of compassion but also by way of judicial duty so that the indigent spouse may not suffer at the instance of the affluent spouse. The legislature, in its discretion, has not fixed any guideline regarding ceiling limit of maintenance, pendente-lite, as in the case of Divorce Act or Parsi Marriage Act. The word *'support'* in Section 24 is not to be narrowly interpreted. It does not mean bare existence. It means that the claimant spouse should have the same comfort as the other. Of course, the Section is not intended to bring about arithmetical equality between the two.

12. The Court while considering the merits of an application for grant of an interim maintenance under Section 24 has to necessarily arrive at prima-facie determination about the earning capacity of the rival claimants. The determination cannot be made with exactitude; it is essentially interim in nature. The Court is called upon to make a summary consideration of amount which the applicant is to be awarded by way of maintenance pendente-lite and litigation expenses in accordance with the financial resources of the parties. Capacity of the other party to earn cannot be taken into consideration – it is only the actual earning of the opposite party on the basis of which relief can be granted. Permanent income and not casual income is relevant. For example if a husband brings on record that the non-applicant wife earns some amount by taking coaching classes for children, this cannot be termed as her permanent income or that the wife has independent permanent source of income. The proceedings being summary, the matter has to be decided on the basis of pleadings supported by affidavits and the documents that may be filed by the parties in support of their case.

13. Where there was sufficient means in the family of the husband on the strength of which the husband got married he has to share the burden to

support his wife during the course of annulment of such marriage.

14. Where the parties do not come forward with exact income they have, the Court would have no alternative but to apply its guess-work. In the decision reported as 140 (2007) DLT 16 *Sh.Bharat Hegde Vs. Smt.Saroj Hegde* it was held that under noted eleven factors have to be taken into account: -

1. Status of the parties.

2. Reasonable wants of the claimant.

3. The independent income and property of the claimant.

4. The number of persons, the non applicant has to maintain.

5. The amount should aid the applicant to live in a similar life style as he/she enjoyed in the matrimonial home.

6. Non-applicant's liabilities, if any.

7. Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.

8. Payment capacity of the non applicant.

9. Some guess work is not ruled out while estimating the income of the non applicant when all the sources or correct sources are not disclosed.

10. The non applicant to defray the cost of litigation.

11. The amount awarded u/s 125 Cr.PC is adjustable against the amount awarded u/ 24 of the Act.

15. Under the circumstances ₹12,000/- per month as interim maintenance payable under Section 24 of the Hindu Marriage Act, 1955 directed to be paid by the appellant to his wife cannot be faulted.

CM No.35327/2016

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

SEPTEMBER 26, 2016
mamta