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

% *Date of Decision: August 24, 2016*

+ **MAT.APP.(F.C.) 106/2015**

NISHA JAIN

..... Appellant

Represented by: Mr. Vikash Deep, Advocate.

versus

AMIT JAIN

..... Respondent

Represented by: None.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J. (Oral)

CM No.14528/2015

1. For the reasons stated in the application 41 days' delay in filing the appeal is condoned.
2. The application is disposed of.

MAT.APP.(F.C.) 106/2015

1. The question arising for consideration in this case is whether the spouse who is gainfully employed and earning equivalent to his/her spouse, can claim maintenance under Section 24 of the Hindu Marriage Act, 1955 just because he/she prefers to resign without bringing on record any justification for that act.
2. The appellant/wife is aggrieved by the order dated April 23, 2015 whereby the learned Judge, Family Court, Rohini dismissed her application to seek interim maintenance in HMA No. 1532/2014 filed by her husband for dissolution of their marriage.
3. As per averments made in the appeal, the marriage between the parties was solemnised on January 22, 2013. After they shifted to a rented accommodation, the respondent/husband left her in the rented accommodation on December 06, 2014 and since then she is living there on her own.
4. On receiving the notice of divorce petition No. 1532/2014 for

appearance before the learned Family Court on January 14, 2015, she filed an application under Section 24 of the Hindu Marriage Act, 1955 for grant of an interim maintenance and litigation expenses. The learned Judge, Family Court after considering the income of the parties and noticing that the appellant/wife was well qualified and had worked with different institutions, drawing salary almost equivalent to her husband, having sufficient amount in her bank account as well in fixed deposits, held it to be a case where she had resigned without offering any explanation. She had not taken up another job despite being MBA (Finance). Relying on decision of the Supreme Court in Neeta Rakesh Jain Vs. Rakesh Jeetmal Jain (Civil Appeal No. 5660 of 2010) wherein it was held that if a person leaves the job, it is to be presumed that he/she has left the job for his/her betterment, the learned Judge, Family Court was of the opinion that she apparently did so to claim maintenance from her husband which she cannot be permitted by incapacitating herself i.e. resigning from the job.

5. Surprisingly, while filing this appeal the appellant/wife preferred not to even place on record copy of the application under Section 24 of the Hindu Marriage Act, 1955 and its reply or the documents filed by the parties in support of her rival contentions. Thus we are left with the rival contentions as noted in the impugned order.

6. The impugned order records the following facts:

- (i) She has sum of ₹3,85,093.40 available in her account.
- (ii) She has been conducting transactions on regular basis in her said account with ICICI Bank.
- (iii) Her resignation was accepted by the ICICI Bank on April 28, 2012.
- (iv) The certificated issued by the ICICI Bank does not disclose any reason as to why she tendered her resignation from the bank.
- (v) She gained employment with Yes Bank and the letter dated May 05, 2014 issued by Yes Bank reveals that she was relieved from her services on February 02, 2014.
- (vi) She was drawing a salary of ₹22,857/- per month.

(vii) No reason has been given by the appellant/wife as to why she stopped working or what step she had taken to get another job after leaving her job with Yes Bank.

7. As per the appellant/wife she along with her husband was staying in the rented accommodation till December 06, 2014 when he intentionally left leaving her there at the rented accommodation. Since then she had been bearing all her expenses. Till she received notice from the Family Court of the divorce petition being filed by the husband/respondent, she did not feel the necessity to seek any maintenance. It was only in the divorce petition that she claimed to be not having sufficient means to maintain herself so as to seek direction for grant of interim maintenance at the rate of ₹2 lakh per month and ₹1 lakh towards litigation charges despite the fact that her husband was drawing a salary of ₹17,000/- per month in the year 2013-14 and ₹20,500/- per month in the year 2014-15 as per the Form-16 issued by his employer and his Income Tax Return for the year 2013-14 and 2014-15. In contrast the appellant/wife was drawing a salary of ₹23,000/- per month when she tendered her resignation without offering any explanation for quitting the job.

8. During the course of hearing learned counsel for the appellant/wife tried to project before us that the appellant/wife was forced to resign as she was suffering from depression and was made to work for long hours. No material has been placed before us in support of the above contention.

9. A bare reading of the Section 24 of the Hindu Marriage Act, 1955 makes the object and the intent of the Section clear. This provision has been enacted to enable the husband or the wife as the case may be, who has no independent source of income for his or her support and to incur necessary expenses to contest the litigation, can claim maintenance *pendente lite* so that proceedings may be continued without any hardship on his/her part. The benefit under Section 24 of the Hindu Marriage Act, 1955 being temporary in nature is aimed at to ensure that where divorce or the other proceedings are filed, either of the party should not suffer because of the

paucity of funds or source of income. However, when both the spouse are earning having good salary, none of them can be permitted to incapacitate himself voluntarily just to claim maintenance from the contesting spouse.

10. The case of the appellant/wife before us is squarely covered by the decision dated March 24, 2000 of Madhya Pradesh High Court reported as 2000(3) MPLJ 100 Smt.Mamta Jaiswal Vs. Rajesh Jaiswal wherein the question as to in what way Section 24 of the Act has to be incorporated was answered as under:

'In view of this, the question arises, as to in what way Section 24 of the Act has to be interpreted: Whether a spouse who has capacity of earning but chooses to remain idle, should be permitted to saddle other spouse with his or her expenditure? Whether such spouse should be permitted to get pendent lite alimony at higher rate from other spouse in such condition? According to me, Section 24 has been enacted for the purpose of providing a monetary assistance to such spouse who is incapable of supporting himself Or herself inspite of sincere efforts made by him or herself. A spouse who is well qualified to get the service efforts made by him or herself. A spouse who is well qualified to get the service immediately with less efforts is not expected to remain idle to squeeze out, to milk out the other spouse by relieving him of his or her own purse by a cut in the nature of pendent lite alimony. The law does not expect the increasing number of such idle persons who by remaining in the arena of legal battles, try to squeeze out the adversary by implanting the provisions of law suitable to their purpose.

11. The appellant/wife before us being highly qualified and experienced in her field, has rightly been denied the benefit of interim maintenance under Section 24 of the Hindu Marriage Act, 1955 as she has not satisfied the criteria laid therein.

12. The appeal has no merits and is hereby dismissed.

PRATIBHA RANI
(JUDGE)

PRADEEP NANDRAJOG
(JUDGE)

AUGUST 24, 2016/ 'hkaur'