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

\+ MAT.APP. (F.C.) 151/2015

SANDEEP SHARMA ..... Appellant
Through: Mr. Jitender Yadav, Advocate.

versus

ANTIMA ..... Respondent
Through: Mr. K.K. Aggarwal, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

<u>O R D E R</u>
% **21.07.2016**

The present appeal is by the husband who has preferred divorce proceedings before the Family Court. His grievance is that the impugned order - under Section 24 of the Hindu Marriage Act, 1955 directing to pay ₹9,000/- per month as *pendente lite* maintenance is unjustified.

The marriage between the parties was solemnized on 06.07.2011. The child, i.e., a son (Jatin) was born out of the wedlock on 13.04.2012. The child is in the custody of the respondent/wife. The parties have been living separately since 29.02.2012, i.e., even before the birth of the child. The wife contended - in the Family Court - that she has no source of livelihood and would have to depend on the maintenance amount for her keep up and that of the son. The appellant who was the petitioner in the divorce proceedings contended that the respondent was not entitled to maintenance. He put forth the defence that his income was meagre, i.e., ₹6,000/- per month.

The Family Court directed the appellant to file an affidavit which order he complied with. He stated in the affidavit that he was not professionally qualified but had completed only school education up to 12th standard. According to him, he deposed that he was previously employed in a private concern and that at the time of filing of the affidavit his earnings was to the tune of ₹6,000/- per month. He was also living in a rented accommodation for which he was paying rent of ₹3,000/- per month. The Family Court after looking into the evidence considered the contentions of the parties. The wife had contended - contrary to the husband's affidavit that he was in fact earning about ₹30,000/- from his business of repairing computer hard disks and trading in computer accessories and was receiving additional income from his ancestral property which he concealed in the affidavit filed by him. The Family Court discussed the evidence especially the affidavit filed by the petitioner (in paragraph 13 of the impugned order). It thereafter observed as follows: -

> *"14. As far as, his past occupation is concerned, the petitioner / non-applicant/husband has shied away from disclosing true facts. However, the statement of account of his bank account in HDFC Bank, which has been filed by him, shows credit of his salary in the month of May 2013 to the tune of. Rs.11,700/-, in the month of June, 2013 to the tune of Rs.13,000/-, in the month of July, 2013 to the tune of Rs. 13,000/-, in the month of August, 2013 to the tune of Rs. 13,000/- and in the month of September, 2013 to the tune of Rs. 12,580/-, from incredible Management Services. Therefore, suffice it*

would, to observe that the petitioner/ non-applicant/husband, in the year 2013, was having a minimum income of Rs.13000/- per month from his private job. When a person leaves a job and takes up some kind of self employment, possibly, a business, he does so only when income generating therefore, is more than his previous income. Therefore, the assertion of the petitioner/non-applicant/husband that presently his income is only to the tune of Rs.5000/- per month, is obviously a wrong assertion, and is therefore rejected.

15. The scrutiny of the statement of account of his bank account with State Bank of India, which has been filed by him, shows that the money has been debited from his account to the tune of Rs.2010/- to NDPL on 0.3.08.2013, showing that he has been paying the electricity bills to this effect. The said payment cannot be for a rented accommodation, and if his parents have already severed all relations with him, as asserted by him, he would not have been paying the electricity bills, for them. Furthermore, in his affidavit the petitioner/non-applicant/husband has mentioned that he is having a mobile phone, having connection number 9650189600, for which he has a monthly expense to the tune of Rs.l50/-. However, the statement of account of his bank account with State Bank of India, shows a payment of Rs.387/- by way of a cheque to the MTNL and the said payment is, possibly, towards the bill of a landline phone. Where the said landline phone is installed, if so, is an information, which the petitioner has withheld. Furthermore, his statement of account shows money being credited into his account to the tune of Rs.3000/- in October and December, 2013, by clearance of some cheque, but the source thereof has not been disclosed, though all indicate one factum very clearly that the petitioner/non-applicant/husband has not come to the court with clean hands and has made false assertions in his affidavit and has deliberately suppressed the vital information regarding his financial status in the reply to the application u/s 24 HMA as well as in the detailed affidavit of financial status.

17. Keeping in view the entire facts and circumstances, the documentary evidence placed on record, the fact that the last drawn salary of the petitioner/non-applicant/husband from his past occupation in the year 2013, was a minimum of Rs.13,000/- per month, the rise in price index and the fact that he has left his previous job for engaging him in self-employment, I assess the *income of the petitioner/non-applicant/husband to be Rs.18,000/- per month. The respondent/applicant/wife requires money for food, clothing and medical facilities, as well as other Misc. expenses for herself and the minor child Jatin, who is presently three years old. The minor child Jatin would have now started going to a per-nursery school, and though no fee receipts have been placed on record, but the respondent/wife would definitely be incurring some expenses on the preliminary education of the minor child. On a modest estimate, I am of the opinion that the ends of justice would be met by awarding pendente-lite maintenance of Rs. 9000/- per month, for the maintenance of the respondent/applicant/wife and the minor child."*

It is contended by the learned counsel that the impugned order has not taken into account the husband's actual status and income and has proceeded on an entirely conjectural basis. It was urged that the appellant is earning only ₹6,000/- per month and that the assessment of the Family Court was entirely off the mark. Counsel for the appellant stated that in October, 2015, he was working with M/s Aggarwal Store at a monthly salary of ₹6,000/-. Counsel for the respondents submitted that even according to the proceedings in the present appeal itself a consent order was made whereby the appellant had agreed to pay ₹6,000/- per month during the pendency of the present proceedings. It is also stated that the Family Court itself recorded that the appellant had volunteered to pay ₹7,000/- per month - a fact which was taken into consideration by the Family Court.

We have carefully considered the materials on record and submissions of the parties.

In assessing income or income earning capabilities of a spouse under Section 24, the Family Court does not carried out a detailed exercise but only evaluates on a *prima facie* basis. In the present case, the Family Court not only took into consideration what the appellant husband said but also the nature of his expenditure and the consistent accruals in his bank accounts together with the statements made by him which had inferred that the appellant was capable of paying ₹9,000/- per month because the assessed income in his case - *prima facie* - was ₹18,000/- per month. The materials on record in no way in our opinion showed that this evaluation was inaccurate or not based on fair assessment of the evidence. Given that the evaluation is tentative and binds the parties during the pendency of proceedings, we are of the opinion that it does not call for interference.

Learned counsel for the respondents submits that execution proceedings is pending and is scheduled to be taken up tomorrow before the Family Court. The appellant husband is notified of this and is directed to be present before the Family Judge Ms. Seema Maini tomorrow, i.e., 22.07.2016. The Family Court is requested to hear the parties and complete its proceedings in the said Execution proceedings within three weeks from today in the light of the above order.

The appeal is dismissed but subject to the above directions.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

JULY 21, 2016
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