FAO-4895-2016 (O&M)&
FAO-5366-2016 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 21st September, 2017

CM Nos. 16703-16704-CII of 2016,
CM Nos. 4539-4540-16044-16045-17970-CII of 2017 IN/AND
FAO-4895-2016

Shweta Talwar

...Appellant

Versus

Ritesh Kumar Talwar

...Respondent

(2)

CM-18453-CII-2016
IN/AND FAO-5366-2016

Ritesh Kumar Talwar

...Appellant

Versus

Shweta Talwar

...Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Trideep Pais and
Mr. Munish Garg, Advocates
for the appellant in FAO-4895-2016 and
for the respondent in FAO-5366-2016.

Mr. Prashant Mendiratta, Mr. Vikas Thakur and
Mr. Vivek Singla, Advocates
for the respondent in FAO-4895-2016 and
for the appellant in FAO-5366-2016.

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AUGUSTINE GEORGE MASIH, J.

CM-16703-CII-2016
IN FAO-4895-2016

Prayer in this application is for condonation of delay of 44 days in filing the main appeal.

Notice of the application was issued on 24.08.2016 but no reply to the same has been filed on behalf of the non-applicant/respondent.

For the reasons mentioned in the application, the same is allowed. Delay of 44 days in filing the appeal stands condoned.

CM-16704-CII-2016
IN FAO-4895-2016

Notice in this application was issued on 24.08.2016 but no reply to the same has been filed.

For the reasons mentioned in the application, exemption is granted from filing certified/typed copies of Annexures P-1 to P-46 and the same are taken on record, subject to all just exceptions.

Application stands disposed of.

CM-4539-4540 CII-2017
IN FAO-4895-2016

Prayer in these applications is for exemption from filing certified/typed copies of Annexures P-47 to P-51 and to place on record the said annexures as additional evidence.

Notice in these applications was issued to the respondent on 06.03.2017 but no reply to these applications has been filed, rather, counsel for the non-applicant/respondent has not objected to the reference of the said documents made by the counsel for the applicant/appellant at the time of arguments. Therefore, we are satisfied that the said documents may be taken on record as additional evidence.

The applications stand allowed.

FAO-4895-2016 (O&M)&
FAO-5366-2016 (O&M)

CM-17970-CII-2017
IN FAO-4895-2016

Prayer in this application is for adducing additional evidence and to place on record Annexures A-55 to A-57.

Notice to the application to the counsel opposite. Counsel for the non-applicant/respondent accepts notice.

After considering the averments made in the applications, we are satisfied that the said documents may be taken on record as additional evidence.

The application stands allowed.

CM-16044-CII-2017
IN FAO-4895-2016

Exemption is granted from filing certified/typed copies of Annexures A-52 to A-54 and the same are taken on record, subject to all just exceptions.

Application stands disposed of.

CM-16045-CII-2017
IN FAO-4895-2016

Prayer in this application is for taking into consideration Annexures A-52 to A-54 as additional evidence.

Notice in this application was issued to the respondent on 01.08.2017 but no reply to this application has been filed, rather, counsel for the non-applicant/respondent has not objected to the reference of the said documents made by the counsel for the applicant/appellant at the time of arguments.

Therefore, we are satisfied that the said documents may be taken on record as additional evidence.

The application stands allowed.

FAO-4895-2016 &
FAO-5366-2016

In a divorce petition filed under Section 13 of the Hindu Marriage Act (hereinafter referred to as 'HMA') by Ritesh Kumar Talwar (hereinafter referred to as 'husband'), an application under Section 24 read with Section 26 of the HMA was filed by Shweta Talwar (herein referred to as 'wife') claiming therein maintenance *pendente lite* for herself and their 3 years 6 month's minor daughter Mannat Talwar at the rate of ₹ 1,73,085/- per month as interim maintenance legal expenses and reimbursement of ₹ 1,27,000/- for the expenses incurred as salary for domestic help and dental expenses, which was partly allowed vide order dated 21.05.2016 passed by the District Judge, Family Court, Gurgaon, granting her maintenance *pendente lite* at the rate of ₹ 75,000/- per month, which includes ₹ 37,000/- per month being received by the wife pursuant to the order passed by the Court in a petition filed under the Protection of Women from Domestic Violence Act, 2005, out of which, ₹ 27,000/- has to be paid towards rent and ₹ 10,000/- towards the education expenses of the minor daughter.

2. Aggrieved by the said order, both wife and husband have preferred separate appeals i.e. FAO No. 4895 of 2016 and FAO No.5366 of 2016 respectively. Since the order impugned in both these appeals is common, therefore, they are being clubbed together for decision and are

being disposed of by a common order.

3. The brief facts essential for decision of these appeals are that the parties got married on 16.01.2011. Out of the matrimonial alliance, a female child namely Mannat Talwar was born on 28.10.2012 at Harlow, England. The child at present is in custody, care and control of the wife. As a matter of fact, this is husband's second marriage as the first marriage ended in divorce by mutual consent. The parents of the husband gave a matrimonial profile and a meeting was arranged and attended by the parents and the relatives. The husband disclosed his nature of business being carried out by him in United Kingdom and that he was running a company by the name of High Speed Shipping Ltd., which was floated in the month of November, 2009 doing business of cargo and freight forwarding. He informed that he was not required to be personally present in United Kingdom to run the day to day affairs and had flexible working hours. It was disclosed as per the wife that he had an income of approximately ₹ 1 crore per annum. On the agreement of the families, the marriage took place after the Roka ceremony. They had been, off and on, going out of the country but ultimately moved to England where the female child was born.

4. Even as late as April, 2014, the husband was a holder of 49% of shares in another company namely Neoworld Ltd. and was entitled to shareholder's funds. Initially, they were residing in a one bedroom apartment, which was on rent. Thereafter, they moved to two bedroom apartment with a big dining hall and a large garden with a fixed parking space, which was on a rent of approximately £900/- (at present around

₹ 91,600/-) per month. Thereafter, they shifted to another apartment at an approximate rent of £950 per month. Staying there till September, 2013, they moved to Singapore as the husband wanted to pursue a new business opportunity. Ultimately, they moved back to India in 2014.

5. The husband, as per the wife, was having assets of more than ₹ 1.65 crores (of the Wellington flat) and around ₹ 1 crore (flat in Sector 89, Gurgaon) to name a few and owned luxurious cars. She was only earning a gross salary of around ₹ 37,000/- per month, which earning also she has lost as she has been terminated by the employer and as of now, she is without any mean. Unfortunately, in February, 2015, the husband abandoned the wife as also their minor daughter taking away even the vehicles leaving her alone to struggle and fight for herself with the minor daughter. The husband had abandoned her and has not provided any accommodation or a car nor is he paying any expenses. Even the *stridhan* articles have not been returned, which are approximately valued at ₹ 20,00,000/-.

6. The parties have been living and maintaining a high middle class status as is apparent from the pleadings, which factum has not been disputed. It has been asserted by the wife that Sector -89, Gurgaon, flat has been transferred by the husband in the name of his mother in April, 2015, which has further been sold for an amount of ₹ 90,00,000/- without giving any share to the husband. Further, 45% share in the three bedroom house in Wellington Estate, DLF Phase-5, Gurgaon, which was valued at ₹ 1.65 crores has been transferred by the husband in the name of his sister on

17.11.2014. These transfers have been given effect to with an intention to depict that he has no property and to deny the wife and the child their due as well as maintenance. Details of the bank accounts have been given but it has been asserted by the husband that they stand closed. Wife has also asserted that the husband has manipulated the bank accounts and window dressed them with an intention to deprive her the due especially by removing her name from all documents of the companies projected himself being the owner and the sole shareholder of the various companies. With an intention to conceal his income, he has projected himself as an employee of the company. As a matter of fact, the husband is earning a huge amount and that too, in pounds after he had moved back to England in the year 2016, as per the statement of the husband himself, and is in a position to pay the amount of maintenance *pendente lite* and other expenses as claimed.

7. It has been prayed in the light of the above that the impugned order passed by the Court below cannot sustain and deserves to be modified by enhancing the amount of maintenance and litigation expenses, as the Court has failed to appreciate true income of the husband while granting ₹ 75,000/- per month as maintenance *pendente lite* and further adding therein the amount granted under the proceedings initiated under the Protection of Women from Domestic Violence Act, 2005, i.e. ₹ 37,000/- per month.

8. On the other hand, so far as the matrimonial aspect and the birth of a female child etc. are concerned, the same have not been disputed by the husband. However, it has been asserted that although, initially, he

was doing well in the business and was earning handsomely but the business virtually failed and his company High Speed Shipping Ltd. had gone in insolvency, which proceedings began on 06.09.2012 resulting in its dissolution on 05.07.2013. There is no share holding or directorship in Neoworld Ltd. as has been asserted by the wife. He indeed was offered share of 49% on 08.04.2013, which he returned on the very next day i.e. 09.04.2013. That being so, on closing of the business in United Kingdom, he had come back to India and was staying here till 2016. Since he had always been working in United Kingdom with regard to carrying and forwarding of freight business, he was unable to get a suitable job in India, because of which, he had to again move back to United Kingdom in May, 2016 to start work as an independent freight carriage agent with an annual income of £11,000/- per annum, which is about £900/- per month, which come to ₹ 75,000/- per month. Annual tax returns submitted by the husband in United Kingdom Tax Office, have also been filed in compliance with the order passed by this Court indicating the said income. The husband, therefore, asserts that the order which has been passed by the Court below cannot sustain and deserves to be set aside as he is unable to pay the amount of maintenance *pendente lite* as awarded.

9. Counsel for the parties have argued their cases and made submissions as have been recorded above asserting and pointing out the flaws in the impugned order with an intention to justify their respective appeals. They have also referred to the pleadings and the various documents, which have been placed on record.

10. We have considered the submissions made by the counsel for the parties and with their able assistance have gone through the records of the case.

11. Hon'ble Supreme Court in **Jasbir Kaur Sehgal Vs. District Judge, Dehradun and others 1997 (7) Supreme Court Cases 7** has observed that no set formula can be laid for fixing the amount of maintenance and depends upon the facts and circumstances of each case. Consideration can be given to the status of the parties, their respective needs, capacity of the husband to pay, sources of income and the properties. The amount of maintenance to be fixed for the wife should be such that she can live her reasonable and comfortable life considering her status and the lifestyle, which she is used to and had been enjoying with her husband. The court has also proceed to hold that the maintenance should be such that she does not feel handicapped in the prosecution of her case. However, the said amount should not be excessive or extortionate. The Court has discretion in the matter to form an opinion on the basis of facts and circumstances of the case.

12. In yet another case, Hon'ble Supreme Court in **Vinny Parmvir Parmar Vs. Parmvir Parmar, 2011 AIR SC 2748** , while dealing with the grant of maintenance has observed that the income of both the spouses and the other property are relevant material in addition to the conduct of the parties and other circumstances of the case including the living standard. The status of the parties, their respective needs, the capacity of the husband to pay, having regard to reasonable expenses for his own maintenance and

others whom he is obliged to maintain under the law and statute would be the relevant factors. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and mode of life she was used to when she lived with her husband. This is followed by a word of caution that the amount so fixed cannot be excessive or effect the living condition of the other party.

13. Hon'ble Division Bench of the Delhi High Court in **Radhika Narang & others Vs. Karun Raj Narang & another, ILR 2009 (III) Delhi 542**, after considering the various judgments passed by the Courts concluded as follows in paras 26 and 27:-

> "**26.** Thus, after considering the above position of law, it is evident that the following principles emerge from the above judgments:-
>
> **a.** Maintenance depends upon the summation of all the facts of the situation [as laid down in **Dr. Kulbhushan Kunwar vs. Raj Kumari** AIR 1971 SC 234].
>
> **b.** For granting maintenance, the scale and mode of living, the age, habits, wants and class of the life of the parties has to be regarded [as laid down in **Dr. Kulbhushan Kunwar vs. Raj Kumari** (supra)].
>
> **c.** Maintenance being such that the wife could live in a reasonable comfort; considering her status and mode of life which she was used to while living with her husband

[as laid down in **Jasbir Kaur Sehgal vs. District Judge, Dehradun and Ors.** 1997 (7) SCC 7]

d. During the pendency of the suit for maintenance, which may take a considerable time to attain finality, the wife cannot be forced to face starvation till she is subsequently granted maintenance from the date of the filing of the suit [as laid down in **Neelam Malhotra vs. Rajinder Malhotra and Ors.** AIR 1994 Delhi 234].

e. Maintenance must necessarily encompass a provision for residence. Maintenance is given so that the lady can live in the manner, more or less, to which she was accustomed. [as laid down in **Komalam Amma Vs. Kumara Pillai Raghavan Pillai and Ors.** SLP (C) No. 3670/2005 decided on 14th November, 2008]

f. Maintenance, necessarily must encompass a provision for residence. Maintenance is given so that the lady can live in the manner, more or less, to which she was accustomed. The concept of maintenance must, therefore, include provision for food and clothing and the like and take into account the basic need of a roof over the head. [as laid down in **Mangat Mal v. Punni Devi** (1995) 6 SCC 88]

g. Maintenance must vary according to the position and status of a person. It does not only mean food and raiment. [as laid down in **Maharani Kesarkunverba v. I.T. Commissioner**, AIR 1960 SC 1343].

27. The purpose of providing maintenance, in our view, is thus meant to secure to a wife/spouse claiming maintenance, as far as possible, the status and facilities enjoyed by her prior to her separation from her husband when her maintenance claim is finally determined. The determination of maintenance not being governed by any rigid or inflexible rule gives wide power and discretion to the Court to do justice."

14. What is apparent from the pleadings and the documents on record is that the parties to the *lis* had been and used to and maintain a lifestyle which ordinarily is of the upper middle class, if not a high class. The parties had been residing in United Kingdom after the marriage and had been living comfortable rather lavish life enjoying various visits and holiday trips in different destinations apart from the other worldly material luxuries. Even back in India in the matrimonial home, the wife has not only been living a very comfortable life rather a lavish lifestyle which has been provided and maintained by the husband. Obviously, they are used to such a life with good accommodation in posh colonies with luxury vehicles to travel and sitting and enjoying the high class society, as is apparent from the fact that they were members of expensive high-end clubs, where they had been going quite frequently rather regularly.

15. It is true that the wife and the husband are both educated but unfortunately, the wife has lost her job as is apparent from her termination order, which has been placed on record. As of now, she is unemployed and therefore, is at the mercy of her parents. As per the various judicial pronouncements, the responsibility and the liability is of the husband. The husband cannot shirk away from this responsibility of maintaining the wife and the minor daughter when it appears that he has not correctly disclosed his income and has, rather, tried to window dress the bank accounts in such a manner as to indicate and depict that he has meager source of income. It also appears that he has transferred his assets in the name of his mother and sister with an intention to deny the wife and minor daughter their due as no clear explanation is coming forth in this regard. In this matter, the husband, it appears, with an intention to deny maintenance to the wife and daughter, has virtually abstained from working with a *mala fide* intention just to deny them of their right. This is apparent from the income tax returns, which have been placed on record. With passage of time, the values, rich culture and heritage, which this country and its people have always been proud of, have eroded and are further eroding. Truth, as a virtue, lost its primacy and is no more being followed especially where relations between the husband and wife turned sour and especially in cases, where business is a vocation. Normally, the correct income is not disclosed and it is shown as nil or meager. The income tax returns, therefore, cannot be taken to be the gospel truth and thus, cannot be treated to be the basis for coming to a conclusion that the husband is not earning enough to pay the maintenance as has been

assessed by the Court below, which would require and mandate reduction thereof. A person, who has approached this Court not with clean hands, cannot expect sympathy from the Court and rather draw an adverse inference against him about his income.

16. In the light of the above, when the factors/principles as settled by the Courts and stated in the earlier part of the order are applied to the facts of the present case and are taken into consideration, it is apparent that the wife and the minor daughter are entitled to a reasonable sum of maintenance, which should commensurate with the needs and requirements for living, if not high middle class lifestyle, at least an upper middle class lifestyle.

17. The husband has enough means from different sources of income including property both moveable and immovable to pay maintenance to the wife and the minor daughter and all through his effort has been to try and to deny their dues with an intention to harass them because of the relations being no more cordial. This is apparent from the fact that he had transferred one of his flats in the name of his mother and the other flat (his share) in the name of his sister. Further, no explanation is forthcoming with regard to the fate/utilization of the amount, which, admittedly, had been received by him on the winding up of High Speed Shipping Ltd. on 05.07.2013, which was the sole ownership of the husband. Factually, the amount received by him after paying the debts in full in his bank account is £344008/-, which comes to ₹ 2,95,67,487/- approximately, out of which, the amount for distribution to the shareholders comes to

£3,01,764.82/- i.e. ₹ 2,50,31,391.89/- and he being the sole shareholder/owner, the whole amount was at his disposal.

18. Therefore, we are of the considered view that the maintenance as has been granted by the trial Court vide impugned order dated 21.05.2016 is just and reasonable and therefore, does not call for any interference by this Court especially keeping in view the fact that the income of the husband would not be less than ₹ 2,50,000/- per month by all conservative standards as the husband has not disclosed his bank details and has merely produced his tax returns, which have been submitted in England and the income disclosed therein is difficult to believe.

19. However, with regard to the claim of the wife for the grant of litigation expenses, learned trial Court has not granted anything to her. We are of the considered view that she is entitled to the litigation expenses also and therefore, grant her a sum of ₹ 50,000/- on account of litigation expenses.

20. It would not be out of way to mention here that in FAO No.5366 of 2016 preferred by the husband, this Court while issuing notice of motion on 21.11.2016, had directed the husband to pay a sum of ₹ 50,000/- per month towards maintenance till the disposal of the appeal. Since the appeal has been decided by dismissing the same, the arrears of maintenance alongwith the litigation expenses be paid to the applicant-wife (Shweta Talwar) within a period of three weeks from the date of this order.

21. FAO No.4895 of 2016 preferred by Shweta Talwar (wife) is partly allowed whereas FAO No.5366 of 2016 preferred by Ritesh Kumar

Talwar (husband) is dismissed with no order as to costs.

22. It is made clear that any observation made herein shall have no bearing on the merits of the case as these are meant only for the purpose of decision of the present appeals.

CM-18453-CII-2016
IN FAO-5366-2016

In the light of the dismissal of main appeal i.e. FAO-4895-2016, the prayer made in the present application for staying the operation of the impugned order has been rendered infructuous.

Disposed of as such.

(M.M.S. BEDI) **(AUGUSTINE GEORGE MASIH)**
JUDGE **JUDGE**

21st September, 2017
Harish

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No