217 **CM-23468-CII-2014 and**
CMM-167-2015 in
FAO-5216-2010

SAMBIT MALLICK
V/S
LEENA MALLICK

Present: Mr. Ajaivir Singh, Advocate,
for the appellant.

Mr. Animesh Sharma, Advocate,
for the respondent.

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The appellant-husband has filed this appeal against the order passed by the lower Court declining the decree of divorce to him against the respondent-wife. The appeal was filed in the year 2010.

During pendency of the said appeal, application under Section 24 of the Hindu Marriage Act was filed by respondent-wife on 21.09.2015 for grant of maintenance pendente lite at the rate of Rs.50,000/- per month claiming that the applicant/respondent-wife is maintaining minor child born out of the wedlock who is studying in a reputed school i.e. Scottish High International School, Gurgaon where the school fee is about Rs.21,000/- per month. It has been averred by the applicant/respondent-wife that during pendency of the divorce petition before the lower Court, she had filed an application under Section 24 of the Hindu Marriage Act and had also claimed maintenance under the Protection of Women from Domestic Violence Act, 2005 wherein a sum of Rs.7,000/- was awarded to the applicant/respondent-wife and Rs.3,000/- was awarded to the minor child. The said amount was enhanced to total of Rs.15,000/- per month for applicant/respondent-wife and Rs.5,000/- for minor daughter besides the rent amount of the house occupied by the applicant/respondent-wife. It has been averred that arrears of maintenance from March, 2013 to September, 2015 i.e. 31 months amounting to Rs.6,20,000/- were not paid by appellant-husband. It has also been averred that at present, the total arrears towards the maintenance under the Protection of Women from Domestic Violence Act, due are more than Rs.32 lacs. She claims that she was unemployed from 2004 to 2015.

The computation of the amount towards maintenance amount under the Protection of Women from Domestic Violence Act giving the break up of the amount due at Rs.32,68,394/- has been placed on record with a copy to the counsel for the non-applicant/appellant-husband.

Application has been opposed by the appellant-husband mainly on the ground that the applicant/respondent-wife is herself working as Manager (Taxation) and is presently earning a sum of Rs.90,000/- per month from the Spice Jet with effect from April, 2016. Prior to that, she was working from May 2015 to March 2016 as Chartered Accountant with firm M/s Amod Aggarwal & Associates on temporary basis.

The non-applicant/appellant-husband has admitted that he is a Commerce graduate and a Chartered Accountant but he has not, in clear terms, disclosed his income rather pursuant to the direction of the Court, has placed on record his income tax returns for the assessment year 2015-16 and 2016-17 showing that his gross income from all the sources during assessment year 2015-16 was Rs. 73,031/- and total taxable income being Rs.73,030/-, the tax liability was nil. The return for the assessment year 2016-17 is, however, showing total income and taxable income as nil with no tax liability. The non-applicant/appellant-husband has produced the aforesaid income tax returns with an objective to persuade this Court to believe that though the non-applicant/appellant-husband is trained professional Chartered Accountant staying in Delhi, yet his taxable income is Nil.

After considering the educational qualification of applicant/respondent-wife and non-applicant/appellant-husband, we feel that both are at par so far as their education, earning capacity and professionalism is concerned. The applicant/respondent-wife has come out with a clear picture showing that she is earning a sum of Rs.90,000/- per month by working for a company with effect from April, 2016. It is absolutely unbelievable that the non-applicant/appellant-husband, having same professional qualification, is not earning any amount. The income tax returns are not the only source to determine the income of a citizen who is not in Government employment.

The computation sheet of income for relevant period has not been made available on record so as to enable this Court to arrive at a conclusion about the nature of the job done by the non-applicant/appellant-husband and we have to hesitation to arrive at a definite conclusion that the non-applicant/appellant-husband has made best efforts and used his professional skill to conceal his income by securing documents. Considering the income tax returns as camouflage documents, we do not place reliance on the income tax returns of the non-applicant/appellant-husband.

The liability of the non-applicant/appellant-husband to pay maintenance to the applicant/respondent-wife and child has repeatedly been considered in parallel proceedings under the Protection of Women from Domestic Violence Act and proceedings under Section 24 of the Hindu Marriage Act before the lower Court.

We have considered the fact that the applicant/respondent-wife is also capable of earning and is also earning for herself and the minor child but the said fact will not be sufficient enough to deprive the applicant/respondent-wife to claim the interim maintenance especially when she on the basis of her educational qualification has made endeavour to work after the non-applicant/appellant-husband had entered into the litigation for seeking divorce.

The judgment in ***Rupali Gupta Vs. Rajat Gupta, 2016 (4) R.C.R. (Civil) 340***, referred by the counsel for non-applicant/appellant-husband has been considered by us wherein the Delhi High Court had not granted interim maintenance under Section 24 of the Hindu Marriage Act. Perusal of the said judgment indicates that in that case the husband had voluntarily acknowledged his responsibility to support his children and had readily agreed to pay the maintenance to the minor children assuring that he would be responsible for proper education of his children and had expressed his desire to bear the additional burden in terms of increase of school fee, transport and other allowances. The facts of the said case are not applicable to the circumstances in the present case where the husband has not only made an attempt to avoid his liability but has also made an attempt to mislead the Court by adopting an evasive approach even in disclosing his income.

The Apex Court in ***Padmja Sharma Vs. Ratan Lal Sharma, 2000 (2) R.C.R. (Civil) 590*** has made an observation that it is not the law that how affluent mother may be, it is the obligation of the father to maintain the minor.

Be that as it may, we do not deem it appropriate to enter into further probe into the source of income and the earnings of the non-applicant/appellant-husband per month but taking into consideration that he is skilled professional expert in accounting; staying in House No.D-1/64, Janakpuri, Delhi and maintaining him well, is held liable to maintain his wife as well as minor child.

Taking into consideration the above circumstances, the liability of the non-applicant/appellant-husband to pay the maintenance pendente lite is determined to the extent of Rs.25,000/- per month. While granting maintenance pendente lite to the applicant/respondent-wife at the rate of Rs.25,000/- per month, payable with effect from the date of application, it is ordered that sum of Rs.20,000/- which is determined as maintenance under the Protection of Women from Domestic Violence Act, will be adjustable and he would be required to pay only Rs.5,000/- per month to the respondent-wife. This amount has been determined taking into consideration the fact that she is shouldering the responsibility of bringing up the minor child which is joint liability of both husband and wife. No separate amount for the applicant/respondent-wife and daughter is being determined in the application under Section 24 of the Hindu Marriage Act.

Since no amount has been paid by the non-applicant/appellant-husband, the arrears have allegedly accumulated to the extent of more than

Rs.32 lacs as per the statement produced before this Court.

However, it is observed that in case the amount of maintenance at the rate of Rs.20,000/- has already been paid to the applicant/respondent-wife, the said amount will be adjustable, otherwise, the non-applicant/appellant-husband would be required to pay sum of Rs.25,000/- per month with effect from the date of application i.e. 21.09.2015.

A sum of Rs.75,000/- is considered to be reasonable amount for litigation expenses payable by the non-applicant/appellant-husband to the applicant/respondent-wife. A sum of Rs.30,000/- already paid towards the interim litigation expenses will be adjustable from the amount of Rs.75,000/-.

The application under Section 24 of the Hindu Marriage Act is disposed of accordingly.

For payment of the arrears of maintenance pendente lite and balance of litigation expenses, to come up on 16.11.2017 on which date the entire arrears as calculated till 30.11.2017 will be paid.

It is made clear that in case of non-compliance of the order, the legal consequences for non-payment of the maintenance pendente lite will follow.

Nothing mentioned in this order will prejudice the right of the applicant/respondent-wife to seek execution of any amount due towards the maintenance prior to the date of application under Section 24 of the Hindu Marriage Act.

The miscellaneous application, CM-23468-CII-2014 for additional evidence under Order 41 Rule 27 CPC filed by the appellant-husband is ordered to be heard with the main appeal.

(M.M.S. BEDI)
JUDGE

October 11, 2017.
harsha

(AUGUSTINE GEORGE MASIH)
JUDGE