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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved On : January 17, 2017

Judgment Delivered On : January 27, 2017

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MAT.APP.(F.C.) 42/2016

ASHISH BHARTI

..... Appellant

Represented by : Mr.Rakesh Tiku, Sr Advocate
instructed by Ms.Beenashaw
Soni & Mr.Sandeep Kumar,
Advocates.

versus

MEETA SACHDEV

..... Respondent

Represented by : Mr.Sanjay Poddar, Sr Advocate
instructed by Mr.Ankur
Mahindro & Mr.Govind Kumar,
Advocates.

WITH

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MAT.APP.(F.C.) 52/2016

MEETA SACHDEV

..... Appellant

Represented by : Mr.Sanjay Poddar, Sr Advocate
instructed by Mr.Ankur
Mahindro & Mr.Govind Kumar,
Advocates.

versus

ASHISH BHARTI

..... Respondent

Represented by : Mr.Rakesh Tiku, Sr Advocate
instructed by Ms.Beenashaw
Soni & Mr.Sandeep Kumar,
Advocates.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. Since the husband as also the wife are aggrieved by the order dated February 20, 2016 disposing of an application filed by the wife under Section 24 of the Hindu Marriage Act 1955, we shall be referring to the parties as the husband and the wife.
2. The learned Judge, Family Court has held that the net monthly income of the husband would be ₹15,04,921/- out of which ₹3,16,812/- per month on account of equated monthly installments paid by the husband has been deducted. The wife, who is maintaining two children has been awarded ₹5,86,143/- per month from the date of the application.
3. Succulently put the grievance of the husband would be: (i) while computing the monthly income of the husband non-recurring payments paid by the employer or recurring in nature but fluctuating each year such as shares of the company which were sold by the husband (non-recurring) and

bonuses (recurring but fluctuating) have been taken into account with reference to the husband's statement of account for one year. (ii) The application under Section 24 of the Hindu Marriage Act was filed by the wife in November 2012, but admittedly she stayed with the husband at the matrimonial house in Dubai till July 2015 and during this period the husband had borne the family expenses. Meaning thereby the maintenance could not be awarded for the period prior to July 2015. (iii) The conversion rate has been applied as of the date of the order ignoring that for prior periods the conversion rate was less. (iv) The learned Judge, Family Court has acted mechanically in apportioning the income pie overlooking the fact that the cost of living which the husband has to incur in Dubai is high. (v) Income of the wife in India has not been properly worked out. (vi) A presumptive interest income in sum of ₹1,67,000/- per month has been wrongly added while computing the gross income of the husband. (vii) Payments being made by the husband for the two flats purchased in Dubai which are in the joint names of the parties has not been taken into account while computing the net disposable money in the hands of the husband. (viii) The learned Judge Family Court has not considered the bank statements of accounts of the wife, for instance in the year 2014-15 there is an inflow of about ₹1,00,00,000/- and an outflow of about ₹75,00,000/-. Large number of such entries numbering 180 in the account of the wife maintained with the State Bank of India have not been analyzed. Even a

presumptive analysis thereof would show that apart from interest income the wife is generating income and unless these entries are explained, it is the case of the husband that the wife is engaged in some business activity.

4. The grievance of the wife is that the income of the husband which as per her is AED1,43,48,340.00 per month (more than ₹26,50,000/- per month). Her grievance is that the learned Judge Family Court has not properly analyzed the statements of the bank where her husband had maintained an account for the last four years i.e. 01.01.2012 to 31.12.2015.

5. It is settled law that the award of maintenance pendente lite under Section 24 of the Hindu Marriage Act 1955 has to be exercised on sound legal principles.

6. The principles to be followed in granting maintenance are well settled in 140 (2007) DLT 16 Bharat Hedge v. Saroj Hedge, wherein it is held that:-

“While considering a claim for interim maintenance, the court has to keep in mind the status of the parties, reasonable wants of the applicant, the income and property of the applicant. Conversely, requirements of the non applicant, the income and property of the non applicant and additionally the other family members to be maintained by the non applicant have to be taken into all. Whilst it is important to insure that the maintenance awarded to the applicant is sufficient to enable the applicant to live in somewhat the same degree of comfort as in the matrimonial home, but it should not be so exorbitant that the non applicant is unable to pay.”

7. At the core of the adjudicatory process would be a determination of the income of the two spouses, their lifestyle when they were living together and the entitlement of the children to the same lifestyle.

8. As per the impugned order the learned Judge Family Court has treated the average monthly income of the husband to be ₹11,46,815/- in the year 2012; ₹11,80,207/- in the year 2013; ₹14,57,855/- in the year 2014 and ₹12,54,947/- in the year 2015 and applying the principle of average has held that the monthly income for the years 2012 to 2015 would be ₹12,59,956/-.

9. The husband does not dispute having received an amount of AED 2,10,000.00 as one time ex gratia payment from the company and further sums of AED 6,29,280.00 and AED 94,392.00 from the sale of shares on March 26, 2012 and April 27, 2014 respectively.

10. Admittedly, the husband had joined the company namely M/s Redington Gulf, Dubai as Channel Sales Manager. He then rose to the post of President on July 16, 2013 with effect from April 01, 2013. His emoluments were enhanced to AED 9,06,000.00 which consisting of fixed component of AED 4,50,000.00; special allowances of AED 1,80,000.00 both payable in 12 equal installments each and variable component of AED 2,76,000.00 payable half yearly subject to achieving mutually agreed targets. Further from July 27, 2014 M/s Redington Gulf, Dubai revised the

emolument package of the husband and he was given AED 10,26,000.00 per annum consisting of fixed component of AED 4,50,000.00, special allowance of AED 2,52,000.00 both payable in 12 equal installments and variable component of AED 3,24,000.00 in half yearly subject to achievement of mutually agreed targets. The salary slips for the period from January 01, 2012 to December 13, 2015 issued by the Redington Gulf, Dubai were filed by the husband.

11. Since special allowances and variable income is fluctuating it was the duty of the learned Judge Family Court to have examined the husband on oath regarding the policy of the company where he was working. The reason being that these variables which are fluctuating have been used as the measure for future maintenance to be paid by the husband.

12. As regards the grievance of the wife we find that the husband has filed his statement of account No.10254108401 as maintained with Standard Chartered Bank; and the statements of accounts bearing No.02401510018835 and No.02401560329803 (NRE / NRO A/c) as maintained with HDFC Bank as also the details of credit card bearing No.4233674000440803. The bank statements of the Standard Chartered Bank and of HDFC Bank are from January 2012 to December 2015.

13. The wife has pointed out as many 123 entries in these account and seeks an explanation urging that her husband had been investing money in

various properties and probably businesses and she highlights these entries in the accounts to urge huge unexplained inflow and outflow of money; either as deposit or withdrawal or transfer. We find that the learned Judge Family Court has referred to the husband's explanation qua some of the transactions and we note that AED 6,29,280.00 dated March 26, 2012 is explained by the husband as a deposit entry for the purchase of 1000 employee share in the Redington International Holdings Limited by Redington International Mauritius Limited. A withdrawal entry of AED 2,00,000.00 on March 31, 2012 is explained by the husband to be an amount paid to an agent for sale of some immovable property and links a deposit entry of AED 1,50,000.00 as refund in cash by the agent and deposited in the account on April 03, 2012. A withdrawal entry of AED 1,50,000.00 on August 28, 2013 is explained as return of a loan. The husband explains an entry dated January 21, 2012 of deposit of AED 1,05,000.00 as payment received by him from his friend Arun Mittal, loaned to Arun Mittal prior to the year 2012. The husband likewise explains a withdrawal entry of AED 50,000.00 on March 25, 2012 as investment in a property jointly with his friend Arun Mittal. He explains a withdrawal entry of AED 30,000.00 on July 29, 2012 as money loaned to a colleague Ashok Veera Raghavan. He explains a deposit of AED 1,25,000.00 on September 17, 2012 as a loan taken from his friend Arun.

14. The NRE account No.02401510018835 which husband maintains with HDFC bank also contain entries of withdrawal of amount or money transferred, for example an entry of July 03, 2012 when an amount of ₹20,00,000/- was transferred by him to his parents account. There is another withdrawal of ₹7,19,815/- on November 27, 2012 to his parents account. There is a deposit entry of ₹23,29,461/- in his HDFC NRE account relating to receipt of second and final installment of ex gratia payment from his company. All these entries need an explanation.

15. The NRO account maintained by the husband with HDFC Bank also shows huge deposits of ₹42,60,715/- on February 24, 2012 which he says was the maturity amount of fixed deposit he had made in the year 2011. Further, there is a withdrawal of ₹38,68,000/- on March 19, 2012 which he relates to opening of fixed deposit account. He also refers to withdrawal of ₹45,60,000/- on April 03, 2012 for making a fixed deposit. Income accruing on these deposits has to be taken into account after interest on the deposits is disclosed by the husband.

16. The husband explains onetime income from sale of shares to the tune of ₹85,00,000/- which were transferred from Dubai and again transfer of ₹27,00,000/- from Dubai viz the receipt of one time ex gratia payment. He explains the source of funds in his NRO account relates to maturity of some fixed deposits made by him prior to the year 2012 and also onetime receipt

on account of share sale. He needs to be examined on this explanation rendered at the bar during hearing of the appeal.

17. It was the duty of the learned Judge, Family Court to check the veracity of the entries and the effect of withdrawals and deposits, the loan(s) husband allegedly advanced either to his friends or to his sister at regular intervals. The interest and profits earned by him from sale of shares or properties also needed to be properly identified and figure arrived at.

18. We have illustratively referred to the entries and not dealing with all 120 entries pointed out by the wife to bring home the point that the husband ought to have been examined on oath to find the correct position and additionally a proper inference to be drawn with reference to many entries explained as investments made jointly with friends or loan advanced or taken from friends. Prima-facie evidence surfaces of husband generating income from investments made along with friends in other properties and this explains the further explanation that many entries relate to loans advanced and loans taken.

19. Admittedly the wife remained in Dubai till July, 2015. She filed the application under Section 24 in November, 2012. There is a serious dispute as to whether the husband bore the expenses to run the household when, notwithstanding the matrimonial dispute between the couple they resided together in the matrimonial house in Dubai. The learned Judge Family

Court has completely overlooked this aspect while directing maintenance to be paid from the date of the application. Surely, if the husband had borne the family expenses when the couple and children were in Dubai the wife would not be entitled to any maintenance.

20. Before granting maintenance to wife and children, the learned Judge, Family Court ought to have assessed the income of the wife too. Admittedly, she was employed in Emirates, Dubai till January 2016 with monthly salary equal to ₹3,00,000/-. She also admits to receiving annual income of ₹8,00,000/- towards interest from fixed deposits per her ITR-I.

21. Though, she had filed the copy of ITR-I showing her total income in Lacs, but had failed to file any statement of income and computation which she filed along with her return, to disclose the nature of her income. The husband moved an application seeking direction for filing such statement of income and computation and though, the learned Judge, Family Court ordered on February 15, 2016 that if such statement is not placed on record, adverse inference may be taken against her, but despite she had chosen not to file the same and relied upon the ITR-I which showed her interest income in the year 2014-15 to be ₹8,00,000/- i.e. between ₹70-75 thousands per month.

22. The husband alleges that if the wife was generating interest income of ₹8,00,000/- per annum, then she definitely had ₹1,00,00,000/- as corpus

with which she could generate such interest. Her statement of account maintained with State Bank of India, Delhi reveal 35 entries of deposit made by her in the year 2013-14 running into Lacs. In the year 2014-15 there is an inflow of ₹1,00,00,000/- and outflow of ₹75,00,000/- thereby leaving a balance of ₹25,00,000/- i.e. ₹2,00,000/- per month, which the husband alleges to be her income, not disclosed by her apart from her interest income aforesaid. Further, she attempted to conceal the terminal benefit of AED 1,42,296.00 she received from her employer and rather alleged that her income is limited only to interest earning on FDRs lent by her father to different entities and individuals. She further alleged that she is not running any business and the so-called inflow and outflow is nothing but the amounts received by her from one party and paid to another party for earning interest. The husband urges the entries in statement do show that she is engaged in some lending business and had concealed her true nature of vocation and income therefrom.

23. The learned Judge, Family Court failed to examine even the huge inflow and outflow of money in her account and neither did he consider this aspect while computing her income.

24. Regarding expenditure on the children at Dubai the husband has referred to the entries in his statement of A/c No. 101254108401 as maintained with Standard Chartered Bank from the period January 01, 2012

to December 31, 2015 which reveal that he paid the fee for his children till 2015. He claims that an amount of AED 9,500.00 on August 29, 2012; AED 11,400.00 on September 10, 2012; AED 10,800.00 on December 25, 2012; AED 35,000.00 on February 02, 2013; AED 11,925.00 on September 08, 2013; AED 9802.00 on March 12, 2014; AED 10,000.00 on March 20, 2014; AED 11,900.00 on July 27, 2014; AED 10,700.00 on October 26, 2014 and AED 10,367.00 on February 15, 2015, all were on account of the school fee paid by him for his children. No effort has been made by the learned Judge Family Court to even consider these entries.

25. The learned Judge has applied the exchange rate one AED = ₹18.29, overlooking that the exchange rate for the year 2012 was ₹14.53; for the year 2013 was ₹15.90; for the year 2014 was ₹ 16.61; for the year 2015 was ₹ 17.45; and for the year 2016 was ₹18.29.

26. Lastly, there appear to be force in the argument of the husband that the impugned order was passed mechanically by apportionment of income pie overlooking the cost of living for stay at Dubai. We fail to understand the basis of assessing the alleged income of the husband in Indian currency firstly by the conversion rate of the year 2016 and then dividing it into parts to arrive at the entitlement of the wife and children at ₹9,02,955/- per month without realising that when the husband was earning in Dirham, he ought to have been spending for his stay in Dubai in Dirham and the cost of living

being high there. The basis to arrive at the figure of ₹9,02,955/- per month is not clear.

27. Thus, it was only on examining both the parties on oath under Order 10 CPC qua the mode of investing huge one time ex gratia payments, the profits earned from purchase and sale of shares, properties as also on the huge inflow and outflow of money in their respective accounts, the income of each of the spouse ought to have been assessed. Once the income of the husband was determined by applying the required conversion rate, then the expenses required by the husband as per the cost of living for his stay at Dubai need to be deducted. Further, then the provision for equated monthly installments payable per month for the properties they both held jointly at Dubai need to be made. Then it was the duty of the learned Judge, Family Court to decide from which date the maintenance ought to have been payable by the husband to his wife, considering the peculiar facts of this case and that too after considering the income of the wife, if any.

28. We find the approach of the learned Judge, Family Court being casual in assessing the income and expenditure of the spouses. Thus, while setting aside the impugned order we direct the learned Judge, Family Court to record the statement of parties on oath under Order 10 CPC to examine the veracity of their claims, allegations and counter-allegations and in the manner as discussed above to arrive at the amount of monthly maintenance.

29. The impugned order is thus set aside and the application filed by the wife under Section 24 of the Hindu Marriage Act, 1955 is restored.

30. A word needs to be spoken at this stage. The application was filed when the wife was in Dubai. As noted above she came to India in July, 2015 and we find that the discussion on the expenses which the wife would require in India to maintain a comfortable lifestyle has not been discussed in the impugned order because there are no pleadings to said effect. The wife claims to be staying in a rented accommodation, incurring school fee at a premier school in Noida. She wants money for the extra curricular activities of the children. She wants money for a chauffeur driven car. She wants money for house servants on the plea that in Dubai the children were used to a high-end lifestyle. The learned Judge ought to have computed the requirements of the wife in India. We therefore request the learned Judge Family Court to call for supplementary pleadings from the wife on this aspect and the response of the husband thereto.

31. But as an interim measure, looking at the status of the parties and the fact that admittedly the wife is earning at least ₹1,50,000/- per month from interest income, and there is scope of her further income emerging, we direct the husband to pay a sum of ₹2,00,000/- as interim maintenance to the wife with effect from August 01, 2015 which would include maintenance for the children till application under Section 24 of Hindu Marriage Act is re-

decided, preferably within 6 months. The amount of maintenance paid shall be liable to adjustment, per final determination of the application under Section 24 of Hindu Marriage Act by the learned Judge, Family Court. Amounts already received by the wife pursuant to interim orders passed in the appeals shall be adjusted. Ashish Bharti is relieved of the obligation to furnish any surety as directed vide order dated May 20, 2016.

32. Both the appeals are disposed of.

33. No order as to costs.

(YOGESH KHANNA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

JANUARY 27, 2017
M/VLD/RS