

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

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Reserved on: 18.05.2017

Delivered on: 24.05.2017

+ CRL.REV.P.363/2016 & CrI.M.A.8005/2016

DEEPAK MALHOTRA

..... Petitioner

versus

DEEPTI MALHOTRA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms. Neena Malhotra, Adv.

For the Respondent: Mr. Pardeep Kumar with Mr. Ramesh Gupta along
with respondent No.1 in person

CORAM:-

HON'BLE MR JUSTICE ASHUTOSH KUMAR

JUDGMENT

ASHUTOSH KUMAR, J

1. The present revision petition has been preferred by the petitioner against the order dated 06.04.2016 passed in M.T No.110/2015 by the Judge, Family Court (North), Rohini, Delhi whereby the petitioner has been directed to pay to the respondent, as an interim maintenance of an amount of Rs.22,000/- per month from the date of the filing of the application under Section 125 Cr.P.C i.e. from 23.07.2014 till the disposal of the petition. The petitioner has been directed to deposit the aforesaid amount directly in the bank account of the petitioner by 10th day of every calendar month. The arrears of the maintenance have also been

directed to be cleared within six months from the date of passing of the order impugned.

2. It has been submitted on behalf of the petitioner that he was married to respondent No.1 on 11.10.2000 and two children were born out of the wedlock. For about 13 years, the spouses lived happily when suddenly, on 08.04.2013, respondent No.1 left the matrimonial house along with the two children and all valuables in a car which was actually gifted by the petitioner to the respondent.

3. Thereafter, it has been submitted, a petition under Section 12 of the Domestic Violence Act was filed by the respondent No.1 against the petitioner which is pending adjudication. Apart from this, a case also was lodged by respondent No.1 against the petitioner and others vide FIR No.290/2013 (P.S.Mukherjee Nagar) for the offences under Sections 498A and 406 of the IPC. The petitioner, on the other hand, had approached the Court under Section 9 of the Hindu Marriage Act for restitution of conjugal rights vide HMA No.1041/2013. In the aforesaid petition, the joint statement of the petitioner and the respondent No.1 was recorded indicating that they have resolved their matrimonial disputes amicably and have decided to forget the past and forgive each other. It was also stated that a decision was taken by them to stay together in the matrimonial home with effect from 05.10.2013. Thereafter, the petitioner was granted anticipatory bail and the application filed by the respondent No.1 for cancellation of bail was rejected.

4. It was then, the petitioner states, a petition under Section 125 Cr.P.C was preferred by respondent No.1 on 25.01.2016 in which the present impugned order has been passed by way of interim maintenance

to the respondent No.1.

5. The learned counsel for the petitioner seeks to assail the order on the ground that evidence tendered by the parties was not duly appreciated and the Court below did not appreciate that only the property of the petitioner was to be taken into account for directing him to pay the maintenance and not the property of his father. It is further submitted that according to the law, if no definite evidence with regard to the income of the husband is offered then the Court has to form its opinion as to what could possibly be the income of the husband. The guess work made by the Court below, it has been argued, is without any basis and is based on wrong assumptions.

6. It has been specifically pointed out that while passing the order dated 06.04.2016, even though the Trial Judge took into account that M/s.Malhotra Electronics was in the name of the father of the petitioner and that the ITRs were of the firm owned by the father of the petitioner, it awarded maintenance to respondent No.1 on the basis of those documents.

7. Despite the fact that the petitioner had annexed the rent agreements dated 29.10.2013 and 07.07.2015 (marked as Mark B), the Court below did not take into account that the petitioner had to pay some amount towards monthly rental of his accommodation.

8. The assumption of the Court that the people do not show their real income and for the purposes of taxation, show lesser income, is not based on any sound logic or perception and such perception cannot be pressed into use while deciding any application judicially. It has also been submitted that the respondent No.1 had voluntarily deserted matrimonial

home and despite having agreed for living under the same roof, has been consistently trying to avoid to come back to the matrimonial fold.

9. The aforesaid contentions of the petitioner were stoutly challenged by the learned lawyer appearing for the respondent No.1 who submitted that the respondent No.1 was ever ready to join her husband but the petitioner has been unwilling to restore the matrimonial life. It has further been submitted that the respondent No.1 is barely educated and does not have any movable or immovable property in her name. The allegations of the petitioner that the respondent No.1 is running a boutique and also has been carrying out the work of manufacturing boxes etc, fetching her good income has been denied. It has been submitted that such vague and bald statement cannot ever be accepted. On the other hand what was asserted by the respondent No.1 is that the petitioner has been running a shop of electronics items in Lajpat Rai market under the name and style of Malhotra Electronics which fetched him an income of Rs.2 lakhs per month. It has been stated that the petitioner also owns a factory and gets rent of an amount of Rs.32,000/- per month for the second floor of the property bearing No.1198 at Dr.Mukherjee Nagar.

10. From the perusal of the order impugned it appears that the Court below did not take into account the rent agreement and rent receipts which were filed by the petitioner. The Court below, did not take the above into account only because in the statement of expenditure, there was no statement regarding payment of monthly rent. The aforesaid ground may not be tenable as the petitioner may have missed to state that. Two receipts of the monthly rental of Rs.1200/- ought to have been taken into account for collecting the expenditure of the petitioner.

11. The observation of the Family Court about the petitioner being the only son of his parents who could not be expected to have been thrown away is also not based on correct logic. However, the Court below was absolutely justified in holding that even though the firm namely Malhotra Electronics stands in the name of his father, Mr.Sunder Lal Malhotra but according to the admission of the petitioner that on account of age of his father, he had been running the business. The income tax return of not only the firm but of the petitioner in his individual capacity has also been produced and the petitioner is shown to be working at the shop as an employee. The Court below has taken into account the income affidavit of the petitioner and other attending circumstances and has assumed the income of the petitioner to be Rs.40,000/- per month. While doing so, the Court below took into account the fact that while the two children were staying with the respondent No.1, school fee was being paid by the petitioner.

12. So far as the expenditure of the respondent No.1 is concerned, the Court, by taking into account the cost incurred on the education of children who are staying with respondent No.1 and their clothings, has assessed it to be approximately Rs.22,000/- per month. As such the petitioner has been directed to pay Rs.22,000/- per month by way of interim maintenance.

13. While awarding maintenance under Section 125 Cr.P.C. or maintenance pendente lite under Section 24 of the Hindu Marriage Act or the maintenance under Section 18 of the Hindu Adoption or Maintenance Act, Courts are not only guided by the income of the husband in determining the amount of monthly maintenance. It has been held that

several factors including the status of the parties, liabilities, if any, of the husband and number of persons to be maintained by the husband would be some of the factors to be taken into consideration. In **Alok Kumar Jain v. Purnima Jain, 2007(96) DRJ 115**, a co-ordinate Bench of this Court while examining grant of maintenance, pendente lite, observed as under:

“10. Law under Section 24 of the Hindu Marriage Act is well crystallized. From the judicial precedents, factors which can be culled out as required to be kept in mind while awarding interim maintenance are as under

- (i) Status of the parties,*
- (ii) Reasonable wants of the claimant,*
- (iii) The income and property of the claimant,*
- (iv) Number of persons to be maintained by the husband,*
- (v) Liabilities, if any, of the husband,*
- (vi) The amount required by the wife to live a similar life style as she enjoyed in the matrimonial home keeping in view food, clothing, shelter, educational and medical needs of the wife and the children, if any, residing with the wife and*
- (vii) Payment capacity of the husband.*

11. Further, where it is noted that the respective spouses have not come out with a truthful version of their income, some guesswork has to be resorted to by the Court while forming an opinion as to what could possibly be the income of the 2 spouses. This guesswork has to be based on the status of the family, the place where they are residing and the past expenses on the children, if any.”

14. In **Dev Dutt Singh v. Smt. Rajni Gandhi, AIR 1984 Del 320**, the learned Single Judge of this Court (Avadh Behari Rohtagi, J.) observed that there cannot be any mathematical formula for award of the maintenance amount such as 1/3rd or any other proportion of the

husband's income. It was held that the law has to operate in a flexible and elastic manner to do complete justice between the parties. The factors to be taken into consideration were laid down in paras 12 to 15 of the judgment, which are extracted hereunder:

"12. The substance of these judgments is this. Each case must be determined according to its own circumstances. No two cases are alike. These cases do not lay down any proposition of law. On the facts of the particular case the Court adjudicated what allowance will be reasonable to award "having regard to the petitioner's own income and the income of the respondent". If the present case illustrates anything it is this that rigid adherence to "one-third" rule may not always be just. Section 24 is not a code of rigid and inflexible rules, arbitrarily ordained, and to be blindly obeyed. It leaves everything to the Judge's discretion. It does not enact any mathematical formulae of one-third or any other proportion. It gives wide power, flexible and elastic, to do justice in a given case.

13. In most cases the standard of living of one or both of the parties will have to suffer because there will be two households to support instead of one. When this occurs, the Court clearly has to decide what the priorities are to be and where the inevitable loss should fall. Generally speaking, wife is the financially dependent spouse. She is potentially likely to suffer greater financial loss from the dissolution of marriage than the husband. For her support the Court has to award a reasonable amount. The cases decided under the Act should not be followed slavishly. In the words of Searman L.J. : "It would be unfortunate if the very flexible and wide ranging powers conferred upon the Court should be cut down or forced into this or that line of decisions by the Courts." (Chamberlain v. Chamberlain, (1974) 1 All ER 33, 38 CA).

14. What is the right figure of periodical payment is essentially a practical decision on the facts. The ultimate evaluation is left to the adjudicator. On the statutory hypothesis it is an

indefensible position to hold that the wife in the present case is not entitled to anything because she is already earning Rs.1,270/- per month which comes to one-third of the husband's income.

15. What is a proper proportion of the husband's income to be given to the wife as maintenance pendente lite is a question to be determined in the light of all the circumstances of a particular case; the very flexible and wide-ranging powers vested in the Court make it possible to do justice.”

15. Now, considering the aforesaid set of facts, the order dated 06.04.2016 is modified to the extent that the petitioner would be required to pay monthly maintenance to the respondent No.1 for an amount of Rs.20,000/- per month with effect from the date of the application which is 23.07.2014 till the disposal of the petition. However, the conditions imposed by the Family Court, requiring the petitioner to pay said amount by the 10th day of every calendar month is sustained. The petitioner would be required to clear off the arrears within six months in six monthly installments.

16. The order dated 06.04.2016 is modified to the extent indicated above.

17. As directed by the Family Court, the case would be listed for final adjudication on 05.07.2017.

ASHUTOSH KUMAR, J

MAY 24, 2017

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