

\$~21

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

+ **MAT.APP.(F.C.) 90/2018 & CM APPL. 17920/2018**

SAURABH KOHLI

..... Appellant

Through: Mr.D.K. Bhatia, Adv.

versus

POOJA KOHLI

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

%

02.05.2018

CM APPL. No.17921/2018

1. Allowed, subject to all just exceptions.

MAT.APP.(F.C.) 90/2018

2. The present appeal impugns an order dated 17th March, 2018 passed by the learned Family Court in HMA 328/2017, whereby an application under Section 24 of the Hindu Marriage Act, 1955 instituted on behalf of the respondent (hereinafter referred to as the 'wife') was allowed, directing the appellant (hereinafter referred to as the 'husband') to pay Rs.10,000/- *pendente lite* maintenance per month to the wife from the date of the institution of the application till the disposal of the petition for divorce under Section 13(1)(ia) of the said Act.

The impugned order was predicated on, *inter alia*, the admitted position that the husband was earning Rs.25,000/- per month, in terms of his income tax returns.

3. It was also noticed that the wife had alleged that the husband had an income of Rs.60,000/- per month from his business, besides earnings from his father's business, as the latter owned immovable and movable properties in and outside Delhi. It was further noticed that the husband admittedly runs a business of men's clothes shop at B7/2, Lal Quarter, Krishna Nagar, Delhi in the name and style of "Sai Mens' Wear" .

4. As was urged on behalf of the husband before the learned Family Court and has been reiterated before this Court, it is alleged that the wife has deposited substantial amounts of cash periodically in her bank account. Predicated on this, it is vehemently urged that the wife is gainfully employed in a business with her father and is consequently, disentitled to any maintenance *pendente lite*.

5. However, a perusal of the statement of bank account of the wife and her affidavit dated 21.02.2018 reflects that, her statement of bank account was for the period 01.04.2014 to 10.02.2017 and was asseverated to be proceeds of a business under the name & style of "M/s. Gulati Machines Tools" run by her father.

6. It is further explained that the relevant entries would clearly show that the amounts thus deposited were immediately utilised for payments to third parties in connection with the said business or were transferred into the account of her father.

7. In this behalf, it is observed that some of the entries, in fact, relate to the period when the wife was residing with the husband in the matrimonial home.

8. Having regard to the totality of the facts, including the financial position of the parties, the learned Family Court directed the husband as above stated. It was further clarified that any amount of maintenance paid to the wife by the appellant/husband in any other proceedings shall be adjusted against the amount awarded by the impugned order.

9. In this behalf, it is relevant to note that there is a proceeding under Section 125 Cr.P.C. instituted by the wife which is pending adjudication before the Court of competent jurisdiction, and is at the stage of recording of evidence. In ***Silky Parmar Vs. Rahul Mohan*** MAT APP. (F.C) 149/2017, this Division Bench vide its order dated 14.11.2017 held as follows:

“7. Section 24 of the HMA makes a provision for award of interim maintenance to a spouse who has no independent income sufficient to support him/her during the pendency of matrimonial *lis*. A Division Bench of this court in Mat. App.(F.C)143/2014 decided on 05.09.2016, titled as **Rupali Gupta Vs. Rajat Gupta** observed as follows:

“7. Section 24 of the Hindu Marriage Act makes a provision for award of interim maintenance to a spouse who has no independent income sufficient to support her and fight the legal battle. In the decision reported as AIR 2003 Mad 212 Manokaran @ Ramamoorthy Vs. M. Devaki High Court of Madras while construing the provision of Section 24 of the Hindu Marriage Act and relying on its earlier decision reported as (2002) 2 M.L.J. 760 Kumaresan Vs. Aswathi held that for grant of maintenance pendent lite, the party should not have sufficient independent income for her/his support.”

8. The import, object and intent of Section 24 of the HMA is to enable the court to award reasonable maintenance *pendent lite* and expenses of proceedings to a spouse, who does not have an independent source of income, sufficient to support him or her, and necessary expenses for the proceedings in the court, with a view that the matrimonial proceedings may be continued without imposing any hardship to him or her.”

(emphasis supplied)

10. In this behalf, it would be pertinent to observe that on a specific query, learned counsel appearing on behalf of the appellant/husband was unable to show any averment to the effect that, even while residing in the matrimonial home, the wife was participating in her father's business on a regular basis. Further, it is a matter of record that the husband runs a shop in a busy market of East Delhi, namely, Krishna Nagar and that a perusal of the record clearly establishes that the marriage between the parties was solemnized in a banquet hall, namely, 'Pearl Grand' and on that occasion, a new Honda City Car as reflected from the photographs of the marriage was given by the family of the wife to the husband.

11. In view of the foregoing discussion, we are of the considered view that the maintenance *pendente lite* in the sum of Rs.10,000/- per month awarded to the wife cannot be said to be without justification. It is also to be borne in mind that a self-employed individual has to disclose his true income and in the absence of such disclosure, the law requires a judge to form an opinion of the likely income of such an individual based on the primary data as available including their capital assets [**Ref: Bharat Hegde Vs. Saroj Hegde** reported as **AIR 2007 Del 197**].

12. It is further observed that the amount of maintenance paid to the wife by the husband has been directed to be adjusted against any amount awarded in any other proceedings.

13. The present appeal, therefore, is devoid of any merit and the same is accordingly dismissed with costs of Rs.10,000/- to be deposited with Delhi High Court Legal Services Authority, within a period of four weeks from today.

SIDDHARTH MRIDUL, J

DEEPA SHARMA, J

MAY 02, 2018
neelam