

\$~16

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

% *Date of Judgment: 22nd October, 2018*

+ **MAT.APP(F.C.) 111/2018**

SANJAY KUMAR Appellant

Through: Mr. Neeraj Sinha, Adv.

versus

STATE (GOVT OF NCT OF DELHI) & ANR Respondents

Through: Mr. Naushad Ahmad Khan, ASC
(Civil) GNCTD with Mr. Zahid
Hanief and Ms. Sana Naseem, Advs.
for R-1

Ms. Laimon Rani Boro, Adv. (proxy)
for Ms. Vibha Mahajan, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

MAT.APP(F.C.) 111/2018

1. The present appeal is directed against the order dated 15.02.2018 passed on an application filed by the respondent/wife under Section 24 of the Hindu Marriage Act, seeking maintenance for herself and her 13 years old minor daughter. The marriage between the parties was solemnized on 12.12.2002. A daughter was born out of their wedlock on 16.06.2004. The Family Court has assessed the income of the respondent/wife in line with the minimum wages and fixed maintenance of Rs.10,000/-per month.
2. Learned counsel for the appellant submits that the Family Court has failed to take note of the fact that respondent is also working as a *Safai*

Karamchari on contractual basis in Government Girls Higher Secondary School, Dr. Ambedkar Nagar, Delhi and is currently earning Rs.10,000/-per month whereas, the appellant/husband does not have a regular job. He works in a tours and travel company and gets no salary, as has been noticed by the Family Court.

3. We have heard learned counsel for the appellant and examined the impugned order dated 15.02.2018. We deem it appropriate to reproduce paras 9 to 13, wherein the Family Court has given reasons for fixing the maintenance at Rs.10,000/- per month. We find that the appellant has not disclosed the name of his employer and the salary which is being paid to him. Paras 9 to 13 reads as under:

“9. A study of the income asset affidavit of the petitioner/ non-applicant reveals a fictional story. The petitioner claims to be working with a Tour and Travel Operator and getting no salary. He claims his house hold expenditure to be Rs.500/- to Rs.1000/- per month. The Court cannot believe that a person can survive in Delhi at an expenditure of Rs.500/- to Rs.1000/- pm. He is apparently concealing the true facts.

10. The petitioner, present in the Court, is an able bodied person, who admits to be a matriculate.

11.As per notification No. F.Addl.LC/Lab/MW/2016/4859 dated 03.03.2017 in continuation of earlier notification no.-F12(1)142/11/MW/Lab/2023-2047 dated 26.07.2011 issued by GNCT, Delhi, minimum wages for a matriculate person, is Rs.16,182/- per month. The petitioner has also admitted in his income asset affidavit that he has income from other sources. Though, in the affidavit he claims the amount of Rs.1500/- per month; since the Court has disbelieved his affidavit; the Court shall guess-estimate the income from other sources to be atleast Rs.5000/- in a month. The income of the petitioner

can therefore, be estimated to be more than Rs.20,000/- in a month.

12. The arguments of Mr. Sinha that respondent is working on contract basis as a Safai Karamchari in a Government Girl Higher Secondary School, is not borne from any document on record and therefore, cannot be accepted to be correct.

13. The respondent admits her income of Rs.3000/- in a month by working as a Maid. The same shall not disentitle her or the minor child from claiming maintenance pendente lite from the petitioner/ husband.”

4. Learned counsel for appellant has urged before us that the appellant is working as an Office Assistant in BM Tour and Travel at Kalkaji, Delhi and at that time, his salary was Rs.4,500/- per month and currently, he is not regularly employed.
5. The Hon’ble Supreme Court in the case of ***Jasbir Kaur Sehgal (Smt.) v. District Judge, Dehradun and Ors.***, reported at (1997) 7 SCC 7 has recognized the fact that spouses in the proceedings for maintenance do not truthfully disclose their true income and therefore some guess work on the part of the Court is permissible. Further the Supreme Court has also observed that “*considering the diverse claims made by the parties one inflating the income and the other suppressing an element of conjecture and guess work does enter for arriving at the income of the husband. It cannot be done by any mathematical precision*”.
6. The Courts have repeatedly held that in family matters, there is a tendency of spouses not to disclose their correct and true income. The present case is no different. In our view, the Family Court has rightly observed that it is a fictitious story as it is not believable that an Office

Assistant in a travel company would be paid salary of Rs.4,500/- per month. Even otherwise, the appellant has failed to place even a single document or a certificate of his employer in support thereof.

7. We find no infirmity in the order of the Family Court, which requires interference.
8. The appeal is, accordingly, dismissed.

G.S.SISTANI, J.

JYOTI SINGH, J.

OCTOBER 22, 2018

PB



नित्यमेव जयते