

\$~62

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

Judgment pronounced on : 24th July, 2018

+ **MAT APP (FC) 165/2018**

VIJAY KUSHWAHA

.....Appellant

Through: Mr. Kunal Manav, Advocate.

Versus

CHANCHAL

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J. (Oral)

CM APPLN. No. 28781/2018 (Exemption)

Exemption allowed, subject to just exceptions.

Application stands disposed of.

CM APPLN. No. 28780/2018 (95 days delay)

This is an application under Section 5 of the Limitation Act, 1963 for seeking condonation of 95 days delay in filing the present appeal.

Heard. For the reasons stated in the application, the delay of 95 days in filing the present appeal is condoned.

Application stands disposed of.

MAT APPL. (FC) 165/2018

1. Present appeal has been filed by the appellant/husband under Section 19 of the Family Courts Act, 1984 assailing the orders dated 25.01.2018 and 10.05.2018 passed by the Judge, Family

Court, Central, Tis Hazari Courts, Delhi whereby the appellant was directed to pay maintenance to respondent/wife @ Rs.4,500/- p.m. from the date of filing of application under Section 24 of the Hindu Marriage Act, 1955 i.e. 22.09.2017.

2. The brief facts of the case as noticed by the Trial Court are as under :

“The petitioner filed a petition under Section 12 (1) (C) of Hindu Marriage Act for annulment of marriage. As per allegations, petitioner and respondent were friends. Respondent proposed to marry her but petitioner made condition that she would marry him with the consent of parents of both sides. Respondent took the petitioner to a temple and obtained her signatures on some documents as also some joint photographs on the pretext that he would show them to his parents for obtaining their consent for social marriage. On 20.05.2015, he handed over the photocopy of marriage certificate issued from Arya Samaj Vedic Sanskar Trust saying that their marriage has already been solemnized and there was no need for consent of parents of either side and asked her to join his company. It has been stated that respondent had got prepared the documents fraudulently and by misrepresentation. They never resided together and marriage has not been consummated at any point of time.”

3. After appreciating the material placed on record and hearing both the parties, the learned Judge, Family Court, vide impugned order dated 25.01.2018, fixed the monthly maintenance of Rs.4,500/- to be paid by the appellant/husband to the respondent/wife. The appellant/husband filed an application seeking review of aforesaid order which was partly allowed and the appellant/husband was

directed to make the payment of pendent lite maintenance to the petitioner @ Rs.4,500/- p.m. from the date of filing of the application i.e. 22.09.2017. Aggrieved by the aforesaid orders, the appellant/husband filed the present appeal.

4. Learned counsel appearing on behalf of the appellant/husband submits that the learned Trial Court erred in fixing the amount of maintenance without considering the fact that the appellant/husband is a permanent resident of Uttar Pradesh and the Minimum Wages Act of Delhi would not be applicable on the appellant. In support of his submission, learned counsel for the appellant has furnished a copy of notification, issued by the Government of Uttar Pradesh bearing No. 471-500/Pravartan-(MW)/15 dated 27.03.2017 which prescribes the minimum wages for unskilled labour as Rs.7400.46 for the period from 01.04.2017 to 30.09.2017.
5. We have heard learned counsel for the appellant and perused the material available on record.
6. Section 24 of the Hindu Marriage Act empowers the Court to award maintenance pendente lite and litigation expenses to a party who has no independent source of income sufficient for his/her support during the pendency of the proceedings under the Hindu Marriage Act, 1955, having regard to the income of the parties.
7. Section 24 of Hindu Marriage Act reads as under:

“Section - 24 Maintenance pendente lite and expenses of proceedings – Where in any proceeding under this Act, it appears to the court that either the wife or the husband, as the case may be, has no

independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable.”

8. In fixing the quantum of maintenance the Courts cannot adopt a straight jacket formula, as the same shall be determined on the basis of several factors which may differ from case to case. Even otherwise, the parties very rarely disclose their true income before the Court. Hence to arrive at a realistic calculation, the Court is bound to proceed in the background of the status of the parties, their respective needs and liabilities and the capacity of the husband to pay.

9. In **Jasbir Kaur Sehgal (Smt.) v. District Judge, Dehradun & Others**, reported at (1997) 7 Supreme Court Cases 7, the Apex Court has observed that :

"Para 7Considering 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.”

10. In the instant case, the appellant/husband failed to produce any documentary proof with regard to his employment status and also his actual income and by not disclosing his sources of income, the appellant/husband is trying to defeat the legitimate right of the respondent/wife to claim maintenance and also shirking his

responsibilities. Accordingly, we are of the view that it is not equitable to allow the relief of reduction in amount of maintenance to the appellant/husband when he himself has not come with clean hands and is trying to hide the true facts from the Court. The appellant cannot be allowed to take the benefit of non-disclosure of his income despite being bound in law to disclose it. Thus his plea that the Minimum Wages Act of Uttar Pradesh shall be applicable to him as he is a resident of Uttar Pradesh, does not come to his rescue. In view of the above, we do not find any cogent reason to interfere in the impugned orders.

11. Accordingly, the present appeal is dismissed.

SANGITA DHINGRA SEHGAL, J.

G. S. SISTANI, J.

JULY 24, 2018
gr