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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgement Pronounced On: 31st August, 2018

+ **MAT.APP.(F.C) 221/2018**

RITU BHARGA

...Appellant

Through:

Ms. Priyanka Garg, Advocate.

versus

SHARAD BHARGAVA

...Respondent

Through:

None.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

CM No. 35332/2018 (Delay)

The present application has been filed by the appellant for condonation of delay in filing the present appeal.

For the reasons mentioned in the application, the delay of 78 days in filing the present appeal is condoned.

The application stands disposed of.

C.M. 35330/2018 (exemption)

Exemption is allowed subject to just exceptions.

Application stands disposed of.

MAT.APP.(F.C) 221/2018 & C.M. 35331/2018(stay)

1. In the present appeal filed under Section 19 of the Family Courts Act, 1984, the appellant/wife is aggrieved by an order dated

19.03.2018 (hereinafter the 'Impugned Order') passed by the Family Court, whereby the application filed under Section 24 of the Hindu Marriage Act, 1955(hereinafter referred to as 'HMA') in the Petition for Dissolution of Marriage under Section 13(1)(ia) of HMA was dismissed.

2. The brief background leading to the filing of the present appeal is that the marriage between the appellant and the respondent was solemnized on 17.11.2009 according to Hindu rites and ceremonies. No issue was born out of the wedlock. A petition under Section 13(1)(ia) of the HMA was filed by the respondent, seeking divorce, against the appellant. During the pendency of the said petition, the appellant moved an application under Section 24 of the HMA thereby claiming maintenance as well as litigation expenses from the respondent. The said application was kept in abeyance by the Principal Judge vide its order dated 27.01.2017 till the recording of the evidence of the respondent in order to ascertain the appellant's income as the same was disputed. After the income statements of the parties were brought on record, the said application was dismissed by the Family Court vide its order dated 19.03.2018 after perusal of the evidence and necessary facts on record. Aggrieved, the present appeal has been filed by the appellant.
3. Ms. Priyanka Garg, the learned Counsel for the appellant strenuously contended that the learned Single Judge committed an error in dismissing the said application moved by appellant in the petition under Section 13(1)(ia) of HMA vide order dated

19.03.2018 and that such findings were based more on hypothetical assumption of vital and necessary facts, based on mere surmises; that the respondent threw the appellant out of her matrimonial home and filed a divorce petition on the false grounds of cruelty; that the income affidavit as well as the Income tax return filed by the respondent shows superfluous expenditures and losses incurred by him so as to avoid the liability to pay maintenance; that the learned Judge, Family Court (South East), Saket, New Delhi erred in not recalling the order dated 27.01.2017 passed by the learned Principal Judge while passing an order dated 19.03.2018. In order to substantiate his case, the learned counsel relied in the case of ***Vinod Dulerai Mehta v. Kanak Vinod Mehta*** reported in ***1989 SCC Online Bom 112***, ***Smt. Renu Jain v. Mahavir Prasad Jain*** reported in ***AIR 1987 Delhi 43*** and ***Jasbir Kaur Sehgal v. District Judge, Dehradun*** reported in ***(1997) 7 SCC 7***.

4. We have heard the learned counsel and perused the material on record.
5. On the basis of the factual background of the present case, it is relevant to produce Section 24 of HMA. Section 24 of HMA states:-

“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:

[Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.]”

A bare reading of the Section 24 of the HMA makes the object and the intent of the Section clear. This provision has been enacted to enable the husband or the wife as the case may be, who has no independent source of income for his or her support and to incur necessary expenses to contest the litigation, can claim maintenance *pendente lite* so that proceedings may be continued without any hardship on his/her part. The benefit under Section 24 of the HMA is aimed at to ensure that where divorce or the other proceedings are filed, either of the party should not suffer because of the paucity of funds or source of income. However, when both the spouse are earning having good salary, none of them can be permitted to incapacitate himself voluntarily just to claim maintenance from the contesting spouse.

6. In the case of ***Manish Jain v Akanksha Jain*** reported in (2017) **15 SCC 801**, it was held that:-

“11. The Court exercises a wide discretion in the matter of granting alimony pendente lite but the

discretion is judicial and neither arbitrary nor capricious. It is to be guided, on sound principles of matrimonial law and to be exercised within the ambit of the provisions of the Act and having regard to the object of the Act. The Court would not be in a position to judge the merits of the rival contentions of the parties when deciding an application for interim alimony and would not allow its discretion to be fettered by the nature of the allegations made by them and would not examine the merits of the case. Section 24 of the HM Act lays down that in arriving at the quantum of interim maintenance to be paid by one spouse to another, the Court must have regard to the Appellant's own income and the income of the Respondent.

14. Section 24 of the HM Act empowers the Court in any proceeding under the Act, if 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 any one of them order the other party to pay to the Petitioner the expenses of the proceeding and monthly maintenance as may seem to be reasonable during the proceeding, having regard to also the income of both the applicant and the Respondent. Heading of Section 24 of the Act is "Maintenance pendente lite and expenses of proceedings". The Section, however, does not use the word "maintenance"; but the word "support" can be interpreted to mean as Section 24 is intended to provide for maintenance pendente lite.

15. An order for maintenance pendente lite or for costs of the proceedings is conditional on the circumstance that the wife or husband who makes a claim for the same has no independent income sufficient for her or his support or to meet the necessary expenses of the proceeding. It is no

answer to a claim of maintenance that the wife is educated and could support herself. Likewise, the financial position of the wife's parents is also immaterial. The Court must take into consideration the status of the parties and the capacity of the spouse to pay maintenance and whether the applicant has any independent income sufficient for her or his support. Maintenance is always dependent upon factual situation; the Court should, therefore, mould the claim for maintenance determining the quantum based on various factors brought before the Court."

In the case of ***Rupali Gupta v Rajat Gupta*** reported in **2016 SCC Online Del 5009**, it was held that:-

"11. In context of award of interim maintenance under Section 24 of the Hindu Marriage Act to a well qualified spouse having the earning capacity but desirous of remaining idle has been deprecated in the decision reported as 2000 (3) MPLJ 100 Smt. Mamta Jaiswal v. Rajesh Jaiswal observing as under:-

"6. In view of this, the question arises as to in what way Section 24 of the Act has to be interpreted. Whether a spouse who has capacity of earning but chooses to remain idle, should be permitted to saddle other spouse with his or her expenditure? Whether such spouse should be permitted to get pendente lite alimony at higher rate from other spouse in such condition? According to me, Section 24 has been enacted for the purpose of providing a monetary assistance to such spouse who is incapable of supporting himself or herself in spite of sincere efforts made by him or herself. A spouse who is well qualified to get the service immediately with less efforts is not expected to remain idle to squeeze out, to milk out the other spouse by relieving him of

his or her own purse by a cut in the nature of pendente lite alimony. The law does not expect the increasing number of such idle persons who by remaining in the arena of legal battles, try to squeeze out the adversary by implementing the provisions of law suitable to their purpose. In the present case Mamta Jaiswal is a well qualified woman possessing qualification like M.Sc. M.C.M. Ed. Till 1994 she was serving in Gulamnabi Azad Education College. It impliedly means that she was possessing sufficient experience. How such a lady can remain without service? It really puts a big question which is to be answered by Mamta Jaiswal with sufficient cogent and believable evidence by proving that in spite of sufficient efforts made by her, she was not able to get service and, therefore, she is unable to support herself. A lady who is fighting matrimonial petition filed for divorce, can not be permitted to sit idle and to put her burden on the husband for demanding pendente lite alimony from him during pendency of such matrimonial petition. Section 24 is not meant for creating an army of such idle persons who would be sitting idle waiting for a 'dole' to be awarded by her husband who has got a grievance against her and who has gone to the Court for seeking a relief against her. The case may be vice-versa also. If a husband well qualified, sufficient enough to earn, sits idle and puts his burden on the wife and waits for a 'dole' to be awarded by remaining entangled in litigation. That is also not permissible. The law does not help indolents as well idles so also does not want an army of self made lazy idles. Everyone has to earn for the purpose of maintenance of himself or herself, atleast, has to make sincere efforts in that direction. If this criteria is not applied, if this attitude is not adopted, there would be a tendency growing amongst such litigants to prolong such litigation and

to milk out the adversary who happens to be a spouse, once dear but far away after an emerging of litigation. If such army is permitted to remain in existence, there would be no sincere efforts of amicable settlements because the lazy spouse would be very happy to fight and frustrate the efforts of amicable settlement because he would be reaping the money in the nature of pendente lite alimony, and would prefer to be happy in remaining idle and not bothering himself or herself for any activity to support and maintain himself or herself. That can not be treated to be aim, goal of Section 24. It is indirectly against healthiness of the society. It has enacted for needy persons who in spite of sincere efforts and sufficient efforts are unable to support and maintain themselves and are required to fight out the litigation jeopardising their hard earned income by toiling working hours."

7. Keeping in mind the above settled proposition of law and applying the same to the facts of this case, it is seen that the appellant herein is an educated women having a B.Com degree as well as professional qualification as PGDMB. As per the income statement filed on record, it is seen that the appellant has been working as a Senior Executive Assistant with The Institute of Company Secretaries of India since the year 1998 and she is earning a gross income of Rs. 44,740/- per month. In the Statement of Expenditure as provided in the income affidavit filed by the appellant, it is stated that she incurs a total expenditure of Rs.60,000/- per month. In the Statement related to Status, Standard of living and lifestyle in Part-IX of the Income affidavit of the appellant, it is shown that a monthly amount of Rs. 35,000/- is withdrawn from her bank

account whereas as per the affidavit filed by the respondent/husband, it is seen that he has an educational qualification as B.Com(Pass) and a professional short term course in Glass Designing. His total annual gross income as per his income tax returns for the assessment year 2016-17 is Rs. 1,75,351. The respondent by way of his income affidavit dated 06.11.2017 states that he maintains three bank accounts and also incurs various other expenditures. The respondent also owns a property in Greater Kailash, New Delhi worth Rs. 90 lakhs. As per the Statement of Liabilities filed by him, the appellant has taken house loan as well as other personal loans.

8. The perusal of the entire facts and circumstances of the present case and also the evidence on record, it is observed that the appellant's monthly income is Rs. 44,740/- while the respondent is drawing an annual income of Rs. 1,75,351/- i.e. amounting approximately to Rs. 14,280/- per month. It is also seen as per the bank accounts and the Statement of Expenditure(s) as filed by the appellant that the appellant has sufficient means to maintain herself. The observations adduced hereinbefore lead to the only conclusion that there is no infirmity in the impugned order whereby the Family Court has struck a clear balance between the ability of the appellant/wife to maintain herself and the extent of liability on her shoulders, and has dismissed the subject application for maintenance. Section 24 of the HMA is not meant for equivalising the income of wife with that of husband but to grant relief only in favour of a spouse who has no independent source of

income for his or her support. In order to authenticate his submission, the appellant have placed reliance in the case of ***Jasbir Kaur Sehgal vs. District Judge, Dehradun*** reported in (1997) 7 SCC 7, however it is contemplated that the facts and circumstances in the present appeal filed by the appellant are different from the said case and hence not applicable in the present case.

9. Accordingly, we find no infirmity in the order dated 19.03.2018 passed by the learned Single Judge. Keeping in mind the aforesaid facts, this court finds that there is no merit in the appeal. The appeal, therefore, stands dismissed. The appeal is disposed of along with other pending application.
10. Ordered accordingly.

SANGITA DHINGRA SEHGAL, J.

G.S.SISTANI, J.

AUGUST 31, 2018

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