

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

% **Date of decision: 18<sup>th</sup> July, 2018**

+ **CM(M) 800/2018**

**JITENDER CHAUHAN** ..... **Petitioner**

Through: Ms. Megha, Adv.

Versus

**RENU CHAUHAN** ..... **Respondent**

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**CM No.28107/2018 (for exemption)**

1. Allowed, subject to just exceptions.
2. The application is disposed of.

**CM(M) 800/2018 & CM No.28106/2018 (for stay)**

3. This petition under Article 227 of the Constitution of India impugns the order [dated 19<sup>th</sup> April, 2018 in HMA No.1571/2017 of the Judge, Family Court, Dwarka, New Delhi] directing the petitioner / husband to, under Section 24 of the Hindu Marriage Act, 1955, pay maintenance at the rate of Rs.20,000/- per month to the respondent / wife.
4. The counsel for the petitioner / husband has been heard.
5. The impugned order is detailed and well reasoned, dealing with each and every contention of the petitioner / husband.
6. The counsel for the petitioner / husband today, has made three contentions. Firstly, it is contended that the Judge, Family Court, Dwarka has not considered the Income Tax Return of the respondent / wife for the year 2015-16 produced by the petitioner / husband.

Secondly, it is contended that the respondent / wife had approached the Court of Additional Chief Judicial Magistrate (ACJM), Bhiwani under Section 23 of the Protection of Women from Domestic Violence Act, 2005 praying for grant of an interim maintenance of Rs.50,000/- per month by the petitioner / husband and which application was dismissed; it is argued that the respondent / wife in the said proceeding did not render the explanation qua the Income Tax Return for the year 2015-16 which was rendered before the Judge, Family Court and has been accepted in the impugned order. The third and last contention is, that the respondent / wife is well qualified and capable of earning and the Judge, Family Court, Dwarka has not considered the judgment of the Division Bench of this Court in ***Rupali Gupta Vs. Rajat Gupta*** (2016) 234 DLT 639 holding that when the wife is well qualified, she cannot be permitted to sit idle and to put burden on her husband by demanding *pendente lite* alimony.

7. I have considered the aforesaid contentions.

8. The impugned order records (i) that the respondent / wife holds a qualification of M.Sc. B.Ed.; (ii) that it was the case of the petitioner / husband that the respondent / wife had filed her income tax return for the year 2015-16 wherein she had shown her gross income as Rs.4,01,240/- and after deduction, her total income as Rs.3,02,840 meaning that she was earning Rs.25,236/- per month; (iii) that it was however the explanation of the respondent / wife that after her marriage with the petitioner / husband, she had gone for study in Australia and her expenses were borne by the petitioner / husband and for visiting Australia the Income Tax Return was got prepared and

filed for seeking visa; and, (iv) that the petitioner / husband was even otherwise unable to plead or aver as to where the respondent / wife was working in the year 2015-16 or even where is she working at present.

9. I have enquired from the counsel for the petitioner / husband today also to show the plea taken anywhere, of the place from where the respondent / wife was earning during the year 2015-16 or to at least name the place where the respondent / wife is today employed or earning as a teacher for which she holds the qualification.

10. No answer is forthcoming.

11. In the aforesaid circumstances, no error requiring interference in exercise of jurisdiction under Article 227 of the Constitution of India is found in the impugned order accepting the explanation aforesaid of the respondent / wife qua the Income Tax Return.

12. It cannot be lost sight of that the Income Tax Return in question is of the time when the respondent / wife was residing with the petitioner / husband and it was not disputed by the petitioner / husband that the respondent / wife had indeed gone to Australia. The explanation was thus plausible one and for the reason of the said Income Tax Return, the respondent / wife could not be declined her statutory right of interim alimony under Section 24 of the Hindu Marriage Act.

13. Even otherwise, even if the respondent / wife was earning in the year 2015-16, what was relevant for adjudication of the application was, whether the respondent / wife has a source of income for the contemporaneous time and of which as aforesaid there is no plea.

14. As far as the contention of the counsel for the petitioner / husband qua the respondent / wife being qualified and capable of earning, I have enquired from the counsel for the petitioner / husband whether not there is large scale unemployment of persons qualified to teach and holding the same qualification as the respondent / wife.

15. The counsel for the petitioner/husband is unable to refute.

16. Merely holding a qualification is no assurance of any earning / income, just like merely holding the LLB degree is no guarantee for successful practice in the field of law. The same Division Bench which pronounced **Rupali Gupta** supra in **Nitin Bhatia Vs. Nidhi Kalani** (2016) 233 DLT 720 (DB) held that “capacity of the other party to earn cannot be taken into consideration – it is only the actual earning of the opposite party on the basis of which relief can be granted”. I have in fact asked the counsel for the petitioner / husband whether the petitioner / husband is in a position to secure any employment befitting the qualification of the respondent / wife for the respondent / wife and to which no positive answer is being given.

17. If the petitioner / husband is able to secure a befitting employment for the respondent / wife and inspite thereof the respondent / wife does not work, then perhaps it may be open to the petitioner / husband to seek modification of the order of payment of maintenance. Else, we are a country of shortages, with large scale unemployment in all fields and I am unable to find myself interfering with the impugned order on such hypothetical pleas.

18. The counsel for the petitioner / husband now contends that the respondent / wife is being paid maintenance at the rate of Rs.10,000/-

per month by the petitioner / husband pursuant to an order in a proceeding under Section 125 of the Cr.P.C.

19. I am however unable to find any such plea in the reply filed by the petitioner / husband to the application of the respondent / wife for interim alimony and no copy of such an order, if any has been filed along with this petition though is handed over in the Court.

20. The counsel for the petitioner / husband is however not willing to commit herself whether the said order has been complied with and / or till what date maintenance thereunder has been paid.

21. The counsel for the petitioner / husband at this stage also refers to *Sujit Kumar Vs. Vandana* (2016) 233 DLT 39 (DB) to contend that the amount paid under Section 125 Cr.P.C. is adjustable in payments under Section 24 of the Act.

22. The petitioner / husband having not raised any such plea before the Family Court and the same having resultantly not been addressed by the Family Court, no interference with the impugned order can be made on account thereof. It will however be open to the petitioner / husband to approach the Judge, Family Court seeking modification of the impugned order on the said ground.

23. As far as the contention, that the said explanation aforesaid qua Income Tax Return was not rendered before the Court of ACGM, Bhiwani, a perusal of the order at pages 29 and 30 of the paper book shows the counsel for the petitioner / husband to have, during the course of hearing before the ACGM, Bhiwani, handed over the said Income Tax Return and it is thus not clear whether the counsel for the respondent / wife had opportunity to take instructions with respect

thereto from the respondent/wife. The same thus cannot also come in the way of the said explanation being accepted in the impugned order.

24. Though the counsel for the petitioner / husband has not made any contentions qua the quantum of maintenance and to which no challenge is thus made but I may mention that the maintenance awarded in the impugned order is found to be in consonance with the pleas of the petitioner / husband himself of having paid Rs.20 lacs in cash to the father of the respondent / wife and in consonance with the conduct of the petitioner / husband of having the Income Tax Return as aforesaid prepared and filed of the respondent / wife while she was residing with the petitioner / husband.

25. No merit is thus found in the petition.

Dismissed.

No costs.

**RAJIV SAHAI ENDLAW, J.**

**JULY 18, 2018**

‘gsr’..