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

% *Date of Judgment: 11th September, 2018*

+ **MAT.APP.(F.C.) 227/2018**

SUDHIR JAIN

..... Appellant

Through: Ms Mithila Jain, Mr Prabhakar
Kandpal and Ms Anamika Chaudhary,
Advs.

Versus

RITA JAIN @ NISHA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

CM. No.36894/2018 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. This is an appeal under Section 19 of the Family Courts Act, 1984 against an order dated 13.07.2018 passed by the Family Court by which an application seeking interim maintenance and litigation expenses under Section 24 of the Hindu Marriage Act (hereinafter referred to as 'HMA') filed by the respondent-wife was allowed and maintenance has been fixed at Rs. 6000/- per month for the respondent-wife and a 3½ years old minor daughter.

4. The necessary facts to be noticed for the disposal of the present appeal are that the marriage between the parties was solemnized on 15.05.2014 at Delhi, as per Hindu rites and customs. As per the appellant-husband, the respondent-wife left the matrimonial home and went to her parental home alongwith all her belongings on 26.08.2014. One daughter namely Pari was born on 17.01.2015 out of the said wedlock. On 17.08.2015, the appellant had filed a divorce petition under Section 13 (1) (ia) of HMA before the Family Court.
5. Ms. Mithila Jain, learned counsel appearing on behalf of the appellant submits that the order which is impugned before us is per-se illegal and is not maintainable either in law or on facts and the same is liable to be set aside.
6. Learned counsel for the appellant submits that the learned Family Court has completely lost sight of the fact that the appellant is a daily wager and is selling petty items on the footpath. He has no regular source of income and he is earning Rs. 7,000-8,000/- per month.
7. It is contended by the counsel for the appellant that the learned Family Judge has overlooked the fact that besides looking after himself, the appellant has to look after his ailing parents. His mother is suffering from heart disease and he has to spend for medicines and for other medical expenses. In the light of this submission, the Family Court has erred in not taking into consideration the income affidavit filed by the appellant to substantiate his claim that it is the sole responsibility of the appellant to maintain his parents.

8. We have heard the learned counsel for the appellant and carefully examined the order dated 13.07.2018 passed by the Family Court. The issue of interim maintenance has been discussed time and again by the Hon'ble Supreme Court and this Court in various judgments.
9. In the case of ***Chaturbhuji v. Sita Bai*** reported at ***(2008) 2 SCC 316***, the Hon'ble Supreme Court discussed the object of the maintenance proceedings and also duty of a man to maintain his wife, children and parents when they are unable to maintain themselves. The Apex Court further interpreted the phrase "unable to maintain herself". The relevant paras 6 to 8 read as under:

"6. The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase "**unable to maintain herself**" in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow...."

(Emphasis Supplied)

10. 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 also 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”

11. In the peculiar facts and circumstances of the case on hand, the Family Court has taken note of the fact that the appellant was initially stated to be working as a helper with M/s Ankit Electronics in Lajpat Rai Market, Delhi since the year 2010 at a salary Rs. 7000/- per month and he remained in employment till 31.08.2017. Thereafter, the appellant started selling petty items on foot path in the area of Old Delhi and is earning Rs. 7,000-8,000/- per month. Learned Family Court has further noted that none of the parties had placed direct material on record in support of their earnings. Taking into account all the facts, the monthly income of the appellant was assessed at Rs. 25,000/- per month by the Family Court.
12. After a careful reading of the aforesaid dicta and taking into consideration that the minimum wages for a skilled worker is double the amount which the appellant has stated to be earning which is unbelievable. The appellant who is present in court seems to be an able bodied person and capable of earning at least more than Rs. 7,000/- per month. We may also note that the respondent besides looking after herself has to look after 3½ years old daughter. We find no infirmity in the order passed by the Family Court. The present appeal is devoid of any merit. Resultantly, the appeal is dismissed.

CM. No.36893/2018 (Stay)

13. In view of the judgment passed above, the application stands dismissed.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

SEPTEMBER 11, 2018
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