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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Judgment: 16th November, 2018

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MAT.APP.(F.C.) 297/2018

AMARDEEP SINGH CHADHA

..... Appellant

Through: Mr.G.K.Bharti, Mr.Charitarth Bharti
and Mr.Rajesh Kumar, Advocates.

Versus

NIRMEET KAUR @ NAINA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S.SISTANI, J. (ORAL)

CM. No.47438/2018 (Exemption)

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

CM. No.47439/2018 (Delay of 17 days)

3. This is an application filed by appellant seeking condonation of 17 days delay in filing the appeal.
4. The delay in filing the appeal is condoned.
5. The application stands disposed of.

MAT.APP.(F.C.) 297/2018

6. The challenge in this appeal is to the order dated 04.09.2018 passed by the Principal Judge, Family Courts, Karkardooma Courts, Delhi whereby an application filed by the respondent/wife under Section 24 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'HMA')

seeking maintenance for herself and her minor son was allowed. The Family Court has awarded the maintenance in the sum of Rs.8,000/- to the wife and Rs.4,000/- to the minor son from the date of the filing of the application.

7. The necessary facts to be noticed for the disposal of the present appeal are that the marriage between the parties was solemnized on 09.02.2003 at Delhi as per Sikh rites. Out of their wedlock, a son was born on 31.12.2003, who is now in the custody of the mother. The parties were living separately since January, 2009. On 05.04.2014, the appellant/husband had filed a petition seeking divorce under Section 13(1)(ia) of HMA before the Family Court.
8. Learned counsel for the appellant submits that the order which is impugned before us was passed in his absence without taking into consideration that the appellant/husband is not in a position to pay such an amount. It is further contended that the appellant/husband is completely dependent on his widowed mother and, thus, he is unable to pay the same.
9. We have heard the learned counsel for the appellant and carefully examined the order dated 04.09.2018 passed by the Family Court. The relevant para of the impugned judgment passed by the Family Court wherein the income of the appellant/husband has been assessed at Rs. 25,000/- per month.

“Petitioner in his affidavit has claimed himself to be unemployed and having no monthly income. In assets he has shown to be owning one shop at Kashmere Gate. The copy of the statement of account of respondent of SBI from 31.10.2015

till June, 2016 show various entries of payments made by petitioner in her account. The school documents relied upon by respondent are pertaining to the year 2004-05. Even the air ticket and hotel booking are of March, 2016. Beyond these documents respondent had failed to file any document to support her contention that petitioner is earning more than Rs. 5 lakhs per month.

However, various documents showing the petitioner as Treasurer of the school during 2004-05 and his traveling by air with family and stay in a hotel at Jaipur reflect on his financial status. It appears petitioner is concealing his income and he has bluntly mentioned in his affidavit that he has no income at all....”

10. As it is often seen that the spouses do not reflect their true and correct income making the task of the Family Court difficult to assess the true and correct income of the spouse. The Family Court has to rely upon guess work to assess the income of the spouses. In the case of ***Jasbir Kaur Sehgal (Smt.) v. District Judge, Dehradun and Ors.***, reported at (1997) 7 SCC 7 wherein the Hon’ble Supreme Court 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. The issue of interim maintenance has been discussed time and again by the Hon’ble Supreme Court and this Court in various judgments. In the case of ***Chaturbhuj 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 reads 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)

12. In the present case, we have found that the case at hand is a perfect example of not reflecting the true and correct income by the spouse before the Family Court. The Family Court has taken into consideration that the appellant/husband is running a business of selling automobile parts from Oberoi Market, Kashmere Gate and has concealed his income. It is noteworthy to mention that the appellant/husband has deposed in his affidavit that he has no income at all. In this background, we are of the view that the learned Family Court has rightly assessed the income of the appellant/husband as Rs. 25,000/- per month. Taking into consideration that the respondent is a housewife and she has to maintain herself and her minor son, we find no infirmity in the order dated 04.09.2018 passed by the Family Court. The present appeal is devoid of any merit. Resultantly, the appeal is dismissed.

13. As prayed, we make it clear that the order passed by the Family Court under Section 24 of HMA will not stand in the way of the appellant/husband raising all grounds available to him in other proceedings including proceedings pending under the Protection of Women from Domestic Violence Act, 2005 and under Section 125 of the Code of Criminal Procedure.
14. At this stage counsel for the appellant prays that the appellant/husband be permitted to clear the arrears in installments. This prayer may be made before the Executing Court who will consider the request of the appellant/husband sympathetically.

G.S.SISTANI, J.

JYOTI SINGH, J.

NOVEMBER 16, 2018//ssc