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

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Date of Judgment: 27.02.2019

+ **MAT.APP.(F.C.) 59/2019**

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..... Appellant

Through: Mr. Satpal Malik & Mr. S.K. Gulati,
Advocates

versus

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..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

1. The appellant is aggrieved by the order dated 31.01.2019 passed by the Family Court on an application filed by the respondent/wife under Section 24/26 of the Hindu Marriage Act (hereinafter referred to as 'HMA') whereby the Family Court has fixed maintenance of Rs. 15,000/- per month for the wife and her two children, who are in the care and custody of the respondent.

2. The necessary facts to be noticed for the disposal of the present appeal are that the marriage between the parties was solemnized on 20.02.2000 at Dehradun as per Hindu rites and ceremonies. Two sons were born out of the said wedlock on 09.12.2000 and 21.08.2004 and are staying in the care and custody of the respondent at Dehradun. The petition seeking divorce on the ground of Section 13(1)(ia) & (ib) of HMA was filed by the appellant/husband on 25.05.2015 which is pending.

3. Mr. Satpal Malik, learned counsel appearing on behalf of the appellant/husband submits that the Family Court has failed to take note of the fact that the appellant is working as a sales man at a weekly bazaar and is only getting salary of Rs. 9,500/- per month, which is not even sufficient to meet his own expenses, therefore, no order on maintenance could have been passed.

4. The counsel for the appellant/husband further submits that the Family Court has wrongly assessed the income of the appellant/husband as Rs.30,000/- per month while relying upon his Income Tax Returns for the year 2012-2013. In the ITR, the gross income of the appellant/husband has been recorded as Rs.2,18,109/-, as per which, the average monthly income of the appellant/husband comes out to be approximately Rs.18,000 per month. It is further submitted by the counsel for the appellant/husband that his income is not the same as in the year 2012-2013.

5. Additionally, it is contended by the counsel for the appellant/husband that the respondent/wife is also working, which has not been disputed in the income affidavit filed by her. In this backdrop, it is thus prayed that the order of the Family Court is liable to set aside.

6. We have heard the learned counsel for the appellant/husband and perused the order dated 31.01.2019 passed by the Family Court. The reasoning adopted by the Family Court in para 9 reads as under:

“9. Respondent has placed on record the receipts of fees of payment of the children to show her liabilities. Even though petitioner has claimed that his total income is only Rs. 9500/- pm but copy of his Income Tax Returns for the assessment year 2012-2013 shows his gross total income as Rs. 2,18,109/-. The ITR for the subsequent assessment years has not been filed. In

his income affidavit, petitioner did not give any details of his assets. However, respondent has placed on record the copies of FD receipts, policy certificate of ICICI Bank, Insurance policies of Bajaj Alliance and LIC in the name of petitioner. It is difficult to accept that a person having meager income of Rs. 9,500/- can have so much investments in his name.”

(Emphasis Supplied)

7. The aim and objective of Section 24 of HMA has been taken into account by the Hon’ble Supreme Court in the case of **Chaturbhuj vs. Sita Bai**, reported at **(2008) 2 SCC 316** whereby it was held that it is the 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 para 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)

8. In this case, the Family Court has taken into consideration the Income Tax Return (ITR) for the assessment year 2012-2013 which shows the gross income of the appellant/husband to be Rs.2,18,109/-. The ITRs for the subsequent assessment years have not been filed. Even in the income affidavit, no details have been given. Even today, the appellant/husband, who is present in the Court, submits that all along, he has been working as a sales person and even at the time of his marriage, he was only a salesman.

9. Having examined the order of the Family Court, we find no infirmity in the same. The Family Court has taken into account the ITR of the year 2012-2013, which could give some indication of the income of the appellant/husband. Although, there is nothing on record to show a correct and fair assessment of the income of the appellant/husband. The Court cannot lose track of the fact that the respondent/wife is single handedly bringing up two children and thus the maintenance fixed, in our view, is reasonable.

10. In the light of what we have stated above, we find no ground to interfere in the order passed by the Family Court. The appeal is devoid of any merit. Accordingly, the appeal is dismissed.

G.S.SISTANI, J.

JYOTI SINGH, J.

FEBRUARY 27, 2019

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