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

% *Date of Judgment: 25th March, 2019*

+ **MAT.APP.(F.C.) 86/2019**

J S

..... Appellant

Through: Mr. S.K. Ahluwalia, Advocate.

versus

S S

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

CM APPL 13274/2019 (Exemption)

1. Exemption is allowed subject to all just exceptions.
2. Application stands disposed of.

CM APPL 13273/2019 (delay in filing)

3. This is an application filed by the applicant/appellant seeking condonation of 34 days delay in filing the present appeal.
4. For the reasons stated in the application, prayer made in the application is allowed. Accordingly, delay of 34 days in filing the appeal is condoned.
5. The application stands disposed of.

MAT.APP.(F.C.) 86/2019

6. The present appeal is directed against the interim order dated 14.01.2019 passed by the Family Court on an application filed by the

respondent/wife under Section 24 of the Hindu Marriage Act (hereinafter referred to as 'HMA') seeking maintenance for herself and two minor school going children. The maintenance has been fixed at Rs.15,000/- per month in addition to the school fee of both the children.

7. The brief facts of the case to be noticed for disposal of the present appeal are that the marriage between the parties was solemnized on 14.04.2010 at New Delhi as per Hindu rites and ceremonies. Two sons were born out of the said wedlock on 30.07.2011 and 18.05.2014, who are staying with the respondent herein. The parties are living separately since 01.06.2017. The petition seeking divorce under Section 13 (1) (ia) of HMA was filed by the appellant/husband on 07.06.2017 before the Family Court, which is pending.
8. Mr. S.K. Ahluwalia, learned counsel for the appellant/husband submits that the Family Court has failed to take into consideration the income tax returns filed by the appellant/husband, which reflects the monthly income of the appellant/husband as Rs.25,000/-. Counsel contends that there was no reason for the Family Court to disbelieve the income tax returns. Counsel further submits that the appellant/husband cannot be asked to pay maintenance more than what he earns.
9. We have heard learned counsel for the appellant/husband and have carefully examined the impugned order dated 14.01.2019 passed by the Family Court. The relevant paras 17, 18, 20 and 21 read as under:

“17. It is the case of the petitioner that he is earning Rs.25,000/- per month by working as a Supervisor in the shop of his father. The documents filed alongwith the income tax returns filed by him would however show that the petitioner is actually the proprietor of the business M/s 'Satpal & Sons'. These documents were filed by the

respondent on a specific direction by this court after filing of the affidavit of income, assets and expenditure. Thus, the petitioner was asked to clarify his position on this issue. On 10.01.2019 the petitioner got recorded his statement in this court that he is indeed the proprietor of M/s Satpal & Sons and he is running a small factory of job works and stitching shirts at 09/4097, Ajit Nagar, Gandhi Nagar, Delhi.

18. The petitioner has maintained that he is earning Rs.25,000/- per month by doing the business. The petitioner also relies on the income tax returns for the assessment years 2015-2016 and 2016-17 which show that the gross income of the petitioner for these years was Rs.2,89,020/-, Rs. 2,82,174/- respectively.

... ..

20. In the facts and circumstances of this case and general standard of the family as can be gathered from the file, I am not inclined to accept the plea of the petitioner that he is only earning Rs.25,000/- per month. Even the present rates of minimum wages for graduate employees in Delhi is about Rs.17,500/- per month. Attention of the court on behalf of the respondent has also been drawn to an entry in the computation of income for the assessment year 2014-15 of the petitioner in which the petitioner has claimed that he has earned Rs.1,50,200/- by giving tuitions in that year which would show that the petitioner is having other incomes. I may also note that though the petitioner is shown as the sole proprietor of the business, the averments of the respondent in her own application would show that the businesses being run are in the nature of family business which are being run by the petitioner, his father and brother. During arguments it was clarified by the petitioner that the business 'Arjun Fashion' is the business of his brother.

21. Having regard to the totality of facts and

circumstances, the income of the petitioner for the purpose of present order is assessed at Rs. 37,500/- per month which is about 50% over and above of what is declared as taxable income of the petitioner. The wife and children are entitled to same standards of living as the husband has.”

(Emphasis Supplied)

10. We find that the Family Court has not only taken into consideration the income tax return filed by the appellant/husband, but has also taken into account the fact that the appellant is not a supervisor in the shop of his father as was contended by him, but was actually a proprietor of ‘M/s Satpal & sons’ and was running a business of job works of stitching shirts in a small factory. In fact, after the appellant had filed his affidavit of income etc., the Family Court had specifically directed him to clarify his status in the said firm. On 10.01.2019, the appellant had himself admitted in his statement before the Court that he was indeed a proprietor in this firm and was doing business. On this basis, the Family Court had come to a finding that the plea of the appellant that he was earning only Rs.25,000/- per month was not acceptable. The Family Court was of the view that even the minimum wages in Delhi for a graduate employee is about 17,500/- per month and so the appellant was definitely earning more than what he claimed. The Family Court also placed reliance on the income tax return filed by the appellant for the assessment year 2014-15, which revealed an earning of Rs.1,50,200/- on account of giving tuitions by him. Thus, it was looking at the totality of the facts and circumstances, the Family Court disbelieved that the appellant was earning only Rs.25,000/- per month as claimed by him.

11. The Family Court also relied on a judgment rendered in the case of ***Bharat Hegde v. Smt. Saroj Hegde*** reported at ***AIR 2007 Delhi 197***, in which this court has observed that unfortunately nobody pays proper taxes to the Government, and self-employed persons seldom disclose their true income. It was further held in the said judgment that a Judge can formulate an opinion pertaining to the likely income from the capital assets of the husband.
12. It has been repeatedly observed that spouses do not give their correct and true income in proceedings arising out of Section 24 of the HMA. In the case of ***Jasbir Kaur Sehgal (Smt.) v. District Judge, Dehradun and Ors.***, reported at ***(1997) 7 SCC 7***, the Hon'ble Supreme Court has 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*”.
13. Thus, we find that it was only after taking into consideration all the factors, the Family Court has assessed the income of the appellant/husband as Rs. 37,500/- per month. It is not in dispute that the respondent/wife alone is bringing up her two school going minor children, who are studying in ‘*Ever Green Public School*’ and ‘*Indus Valley Play School*’ respectively. The Family Court in our view has thus, rightly fixed the maintenance @ Rs.15,000/- per month in addition to school fee of both the children.

14. We find no infirmity or illegality in the order dated 14.01.2019 passed by the Family Court, which requires interference. The appeal is devoid of any merit. The same is accordingly dismissed.

G.S.SISTANI, J

JYOTI SINGH, J

MARCH 25, 2019//

