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

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*Date of Judgment: 08.02.2019*

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**MAT.APP.(F.C.) 27/2017 & CM APPLs 51991-92/2018**

**S R**

..... Appellant

Through: Ms. Manisha Arora, Advocate

Versus

**S R**

..... Respondent

Through Mr. Praveen Kumar, Advocate  
alongwith respondent in person

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

**HON'BLE MS. JUSTICE JYOTI SINGH**

**G.S. SISTANI, J. (ORAL)**

1. The appellant/husband is aggrieved by the order dated 02.01.2017 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' by which interim maintenance of Rs. 25,000/- per month has been awarded to the respondent/wife from the date of aforesaid application except for the period during which the respondent/wife remain employed i.e. between June, 2012 to November, 2012 and also for the period April, 2016 to November, 2016. The litigation expenses to the tune of Rs. 11,000/- were also awarded to the respondent/wife.

2. The necessary facts to be noticed for the disposal of the present appeal are that the marriage between the parties was solemnized on 28.01.2008 at New Delhi as per Hindu rites and ceremonies. No child was born out of said wedlock. The parties are living separately since 10.10.2010. The appellant/husband has filed a petition for divorce seeking divorce under Section 13 (1) (ia) of HMA on 27.10.2010 which is pending.
3. Counsel for the appellant/husband submits that the Family Court has failed to take into account that the respondent/wife had played a fraud upon the Court by filing false affidavits before the Family Court concealing her employment and financial status. She further submits that the respondent/wife is a well qualified person and besides being MBA in Human Resource, she has done a Diploma in Secretarial practice and has a rich corporate experience. In this backdrop, it is submitted that the respondent/wife is not entitled to any maintenance at all and the Family Court was not justified to only exclude the limited period of employment once the fraud has been detected by the learned Family Court.
4. The counsel for the appellant/husband has further contended that the Family Court has erred in assuming the salary of the appellant/husband to the tune of Rs. 90,000/- to Rs. 1,00,000/- per month ignoring the salary slip, Form 16 and various other documents including ITR's available on record. It is also submitted that the opportunity to file the current salary slip was not given to the appellant/husband as he is working with a limited company i.e. TATA

AIA Life Insurance Company and his true income cannot be concealed.

5. The counsel further contended that the appellant/husband is looking after his old aged parents who are dependent upon him; his father is surviving on a meagre pension of Rs. 1,682 per month and his mother is a housewife.
6. Counsel for the respondent/wife has opposed this appeal on the ground that the respondent/wife was not working at the time of filing of the application under Section 24 of HMA and it is only thereafter in the month of June 2012, she got a temporary job for a limited period of six months. As she lost her temporary job due to the conduct of her husband in the month of November, 2012, there was no concealment by the respondent/wife and the said fact has been duly considered and taken into account by the learned Family Court. Counsel for the respondent/wife also submits that the respondent/wife instead of sitting idle at home is continuously making efforts to get a job and it has been rightly noted and considered by the learned Family Court and thus she prays that there is no infirmity in the view taken by the learned Family Court.
7. We have heard the learned counsels for the parties and carefully examined the order passed by the Family Court. The relevant para 6 of the impugned order dated 02.01.2017 reads as under:

*“6. Without going into the reasons and the circumstances under which the applicant/respondent sworn a wrong affidavit, this court is of the opinion that her right to claim maintenance pendente-lite can not be rejected only for having sworn a wrong*

*affidavit. Law will take its own course and appropriate action if required, shall be taken against her for having sworn a wrong affidavit. Court is also alive to the situation that an employable wife ought not be granted maintenance to encourage an army of unemployed. Reading of her statement recorded in the court today, indicates that the applicant/respondent is making efforts to look for an employment. She has even accepted an employment on contractual basis. Court is, therefore, of the opinion that the applicant/respondent is not sitting idle and merely waiting for doles to be provided by the non-applicant/husband. Having said that, there is no dispute to the legal position that the applicant/wife is entitled to maintain the same status in life, as she maintained while living in the matrimonial home. It is on record that non-applicant/petitioner was drawing a salary of about Rs. 70,000/- for a month in August, 2012. His current income can be expected to be in the range of Rs. 90,000/- to Rs. 1,00,000/- per month. Considering the fact that the applicant's last drawn income was Rs. 26,680/- a month; this court is of the opinion that she is entitled to maintenance pendente-lite @ of Rs. 25,000/- per month.....”*

“Emphasis Supplied”

8. 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)

9. There is no doubt that the employability and the employment should not be misunderstood as being the same as held by the Division bench of this Court in the case of **Ruchi Rai Sehmbeys vs. Simon Jason Sehmbeys** reported at **2013 SCC Online Del 4657**)
10. Taking into consideration that the Family Court has assessed the income of the appellant/husband between Rs.90,000/- to Rs.1,00,000/- per month and also considered that the respondent/wife is unemployed and the period of her employment has been deducted, we find no infirmity or illegality in the interim order passed by the Family Court.
11. The present appeal is devoid of any merit. Resultantly, the appeal alongwith the pending applications stand dismissed.

न्यायमेव जयते

**G.S.SISTANI, J.**

**JYOTI SINGH, J.**

**FEBRUARY 08, 2019**

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