

\$~10

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

% *Date of Judgment: 12.02.2019*

+ **MAT.APP(F.C.) 93/2018 & CM APPL 18317/2018**

K N

..... Appellant

Through: Mr. Arvind Kr Gupta, Mr. C Prakash,
Mr. Prashant Bhardwaj, Mr.
Manmohan Singh, Mr. Anuraj
Tirthankar, Advocates

versus

R G

..... Respondent

Through: Mr. Prabhjit Jauhar, Ms. Rosemary
Raju, Ms. Aishwarya, Ms. Upasana
Goel, Advocates

CORAM:

**HON'BLE MR. JUSTICE G.S. SISTANI
HON'BLE MS. JUSTICE JYOTI SINGH**

JYOTI SINGH, J. (ORAL)

MAT.APP(F.C.) 93/2018

1. The appellant/wife is aggrieved by the order dated 23.03.2018 passed by the Family Court whereby an application filed by the appellant/wife under Section 24 of the Hindu Marriage Act (hereinafter referred to as 'HMA') claiming interim maintenance of Rs. 2,50,000/- per month has been dismissed.
2. The necessary facts for the disposal of the present appeal are that the marriage between the parties was solemnized on 24.06.2012 at New Delhi as per Hindu rites and ceremonies. No child was born out of the said wedlock. The parties separated on 03.09.2012 when the respondent/husband left for Singapore. He is gainfully employed and

living in Singapore ever since. Petition seeking a decree of nullity of marriage under Section 12(1)(a) & (c) of HMA was filed by respondent/husband on 24.11.2012, which is pending. The appellant/wife had filed an application under Section 24 of HMA claiming maintenance *pendente-lite* @ Rs. 2,50,000/- per month along with litigation expenses of Rs.1,50,000/-.

3. The learned Family Court vide the impugned order has dismissed the application of the appellant herein under Section 24 of the HMA for grant of maintenance *pendente lite* on the ground that the appellant/wife is highly qualified and has been working in reputed MNCs and is even presently employed, with a good salary.
4. Learned counsel for the appellant has assailed the order of the Family Court by contending that the Family Court has erred in not appreciating that the status of the parties is not similar or comparable, as the respondent/husband is earning more than INR 13 Lacs per month and living a luxurious life in Singapore while the appellant is living in India and is earning a gross salary of approximately Rs.1,25,000/- per month and her net salary is about Rs. 1 Lac per month. He submits that the Family Court has also failed to appreciate that while the respondent is living in a posh locality in Singapore, the appellant, prior to November, 2017 was living in a shared guest house and had to shift to a rented accommodation due to paucity of funds. It is also urged that the Family Court has ignored the immoveable properties including property at Sarita Vihar, owned by the respondent, while the appellant has no property or asset in her name. It is further submitted that the Family Court has erred even on facts in

holding that Sarita Vihar is not a lower locality or a slum area where the appellant cannot be expected to live as this is factually incorrect and the appellant is actually staying in a rented accommodation in Gurgaon and not at Sarita Vihar. In fact, it is vehemently contended that the appellant had never stayed in Sarita Vihar. The order of the Family Court is also assailed on the ground that the Family Court had erroneously believed the income affidavit of the husband in which it is mentioned that the expenditure of the respondent/husband is Rs. 11 Lacs per month as anyone who has an income of only Rs. 13 Lacs per month and an expenditure of Rs. 11 Lacs per month cannot have a saving of more than Rs. 2 Lacs per month. Learned counsel for the appellant submits that the respondent is a Bachelor of Engineering from BITS Pilani, MS from Stanford University, USA and MBA from INSEAD University, France. He is working in a very reputed multinational company at Singapore and at the time of marriage, he was earning Rs. 78 Lacs per annum in addition to perks and is presently also working with the said company in Singapore. It is also argued that even the father of the respondent is working as a General Manager with a Company and both parents are living in their own house in Sarita Vihar and are not dependent upon the respondent. The sum and substance of the argument is that the Family Court ought to have seen the huge gap in the incomes of the parties and awarded an interim maintenance as claimed by the appellant so that she could have a life style similar to the respondent.

5. Per contra the learned counsel for the respondent has submitted that the application under Section 24 is an abuse of process of law. The

appellant has failed to give any reason as to how she is entitled to Rs. 2,50,000/- per month as maintenance. It is contended that the appellant had concealed her true and correct income. She is highly qualified, as she is PG Diploma in International Business from IGNOU and has a BA (Vocational) degree from Kamla Nehru College, University of Delhi. She was posted as Business Support Manager in Samsung Data Systems India Pvt. Ltd. since 02.05.2017. Her monthly salary after deductions was approximately Rs.70,000/- per month. It is also submitted that she has Bank Accounts in IDBI Bank and ICICI Bank. Earlier she was working with M/s. Target Australia between 2011 and 2012 and as a Consultant for four months between 2012 and 2014. Between 2014 and 2017, she had worked as Programme Manager with DHL Express, Mumbai with a salary of Rs. 12 Lacs per annum. She pays Rs. 48,000/- per annum for a Life Insurance policy, has sufficient jewellery and owns laptop etc. It is contended that her monthly withdrawal from the Bank is Rs.50,000/- to Rs.60,000/- per month. She had one official foreign trip to Singapore in 2014 and one to USA in 2017. As per her own Income Affidavit, she is presently employed as Key Account Manager at APL Logistics India Pvt. Ltd., Gurgaon with net salary of Rs.1 Lac per month. On the other hand, the respondent is a BE and MS with MBA degree. He is working as Vice President in Infineon Technologies at Singapore. His father had retired and the mother is dependent on him. He had invested certain shares in a company but they have lost their value. His expenditure and income are nearly equal as cost of living is high in Singapore. It is thus contended that the appellant is not only

qualified and has always been working but has sufficient means to maintain herself and the standard of the living of the parties is almost similar.

6. The Family Court after going through the pleadings and the income affidavit etc., came to a finding that the appellant was highly qualified and has been working in reputed multi-national companies. Even prior to the marriage, she was working and insofar as the status of the parties is concerned, it was almost similar to each other. While the respondent is living in a rented accommodation in Singapore, the appellant is living in a rented accommodation as well. The Family Court was of the view that merely because the respondent was working and living in Singapore, it could not be a criteria to award maintenance to the appellant because if he was living in Singapore, his expenditure was also in Singapore dollars and even the locality of Sarita Vihar in which the appellant resides is not a lower locality. The Family Court found that this was not a case where the wife was jobless or did not have a decent life and Section 24 of the Act was not to extort money from the other spouse. Relying on the judgments in the case of *Mamta Jaiswal vs. Rajesh Jaiswal*, II (2000) DMC 170, *Jasbir Kaur Sehgal vs. District Judge, Dehradun & ors.*, (1997) 7 SCC 7, and several other judgments, the Family Court dismissed the application under Section 24 finding the same to be an abuse of the process of law.
7. We have perused the judgment of the Family Court and the pleadings and other documents and have examined the rival submissions of the parties. A perusal of the income affidavits and the pleadings

exchanged between the parties shows that both the parties are well qualified and have been working in reputed companies. The only difference being that the appellant has been and is working in India while the respondent is employed at Singapore. The income affidavit also indicate that the appellant even presently has a gross salary of Rs. 1,25,426/- per month and a net salary of around Rs. 1 Lac per month. She is residing in a rented accommodation at Gurgaon though it is not disclosed as to what is the rent of the accommodation. On the other hand, the respondent too is highly educated and most of his education is from Universities abroad. It is also not in dispute that the respondent is employed at a very senior position in a company at Singapore and is earning about Rs. 13 Lacs per month. In addition to this, the respondent also has certain immovable assets while the appellant has none. It is also not disputed that there is no child born from the wedlock and the appellant has no other liability. The appellant had filed the application under Section 24 claiming Rs. 2,50,000/- per month as maintenance *pendente lite* and Rs. 1,50,000/- towards litigation expenses.

8. Before adjudicating on the facts of this case, we would traverse through the legal position, as culled out by various judicial pronouncement relating to maintenance *pendente lite*. No doubt it is true that as per law every able-bodied husband has a duty to maintain his wife, who is unable to maintain herself. The law as has developed, does not permit any one to take a stand that the grant of maintenance should be only to fulfil the basic needs of food or clothing etc. but mandates that the maintenance should be such that the other party

should be able to live with a status and standard as is being enjoyed by the party granting maintenance. The purpose of providing maintenance is to secure such facility and a life style which the wife enjoyed while living in the consortium. At the same time, there is a whole plethora of judgments which lay down that if a spouse is qualified and has a capacity to earn then the law does not expect that such a spouse would sit idle and burden the other spouse with maintenance. Section 24 is not meant for creating an army of idle persons and law does not help indolent. In the case of ***Mamta Jaiswal vs. Rajesh Jaiswal*** reported at 2000 (3) MPLJ 100, the Madhya Pradesh High Court has held that everyone has to earn for the purpose of maintaining himself or herself or at least make a sincere effort in that direction. If this criteria is not applied, there will be a growing tendency amongst the litigants to prolong such litigation and to milk out the adversary. This cannot be the aim of Section 24 as the same has been enacted for needy persons who in spite of sincere efforts are unable to support themselves but are required to fight a litigation. The relevant para from the said judgment is as under:

“6. In view of this, the question arises as to in what way Section 24 of the Act has to be interpreted. Whether a spouse who has capacity of earning but chooses to remain idle, should be permitted to saddle other spouse with his or her expenditure? Whether such spouse should be permitted to get pendente life alimony at higher rate from other spouse in such condition? According to me, Section 24 has been enacted for the purpose of providing a monetary assistance to such spouse who is incapable of supporting himself or herself in spite of sincere efforts made by him or

herself. A spouse who is well qualified to get the service immediately with less efforts is not expected to remain idle to squeeze out, to milk out the other spouse by relieving him of his or her own purse by a cut in the nature of pendente lite alimony. The law does not expect the increasing number of such idle persons who by remaining in the arena of legal battles, try to squeeze out the adversary by implementing the provisions of law suitable to their purpose. In the present case Mamta Jaiswal is a well qualified woman possessing qualification like M.Sc. M.C. M.Ed. Till 1994 she was serving in Gulam Nabi Azad Education College. It impliedly means that she was possessing sufficient experience. How such a lady can remain without service? It really puts a big question which is to be answered by Mamta Jaiswal with sufficient cogent and believable evidence by proving that in spite of sufficient efforts made by her, she was not able to get service and, therefore, she is unable to support herself. A lady who is fighting matrimonial petition filed for divorce, can not be permitted to sit idle and to put her burden on the husband for demanding pendente lite alimony from him during pendency of such matrimonial petition. Section 24 is not meant for creating an army of such idle persons who would be sitting idle waiting for a 'dole' to be awarded by her husband who has got a grievance against her and who has gone to the Court for seeking a relief against her. The case may be vice-versa also. If a husband well qualified, sufficient enough to earn, sits idle and puts his burden on the wife and waits for a 'dole' to be awarded by remaining entangled in litigation. That is also not permissible. The law does not help indolents as well idles so also does not want an army of self made lazy idles. Everyone has to earn for the purpose of maintenance of himself or herself, atleast, has to make sincere efforts in that direction. If this

criteria is not applied, if this attitude is not adopted, there would be a tendency growing amongst such litigants to prolong such litigation and to milk out the adversary who happens to be a spouse, once dear but far away after an emerging of litigation. If such army is permitted to remain in existence, there would be no sincere efforts of amicable settlements because the lazy spouse would be very happy to fight and frustrate the efforts of amicable settlement because he would be reaping the money in the nature of pendente lite alimony, and would prefer to be happy in remaining idle and not bothering himself or herself for any activity to support and maintain himself or herself. That can not be treated to be aim, goal of Section 24. It is indirectly against healthiness of the society. It has enacted for needy persons who in spite of sincere efforts and sufficient efforts are unable to support and maintain themselves and are required to fight out the litigation jeopardising their hard earned income by toiling working hours.”

9. The said judgment has been relied upon by a coordinate bench of this court in the case of **Rupali Gupta vs. Rajat Gupta**, 234 (2016) DLT 693 wherein this court has upheld the view of the Family Court declining interim maintenance to a wife who was a qualified Chartered Accountant and in profession since 2003. In the case of **Damanreet Kaur vs. Indermeet Juneja**, (2013) 1 JCC 306, this court was dealing with the similar situation and upheld the order of the trial court where the wife was declined maintenance under the Domestic Violence Act on the ground that she was well qualified and had capacity to work and had been actually working in the past.

10. In the light of the judicial pronouncements on the issue of the interim maintenance, we would now examine the facts of the present case. The undisputed fact is that the husband is well educated and employed at a senior position in a reputed company in Singapore and has been earning about Rs.13 lakhs INR per month. That he lives in a rented accommodation is also not disputed between the parties. On the other hand, the appellant is also well educated and has been working with reputed companies from the days prior to her marriage and has been employed throughout the period post marriage and as her own income affidavit reveals, is presently also employed and has a net salary of about Rs.1 Lac per month. The contention of the appellant is that she is entitled to maintenance *pendente lite* @ Rs.2.50 lakhs per month, is primarily based on the fact that the respondent is earning in ‘dollars’ in Singapore. The contention of the respondent, however, is that while the respondent may be earning in ‘dollars’ but even his expenditures are in ‘dollars’. We cannot agree with the contention of the appellant that merely because the respondent is earning in ‘dollars’ she is entitled to the maintenance claimed by converting his salary in dollars into Indian rupees. We agree with the respondent that his expenditure being in dollars, the salary being in dollars is a fact which cannot be overemphasized. We are supported in our view by a judgment of this court in **Bindu Chaudhary vs. Deepak Suga** reported at (2016) 234 DLT 108 (DB), where this court has held that if a person is employed in Dubai and earns in currency of that country, then he also spends in that currency. So, it is not open to the wife to convert his income in

Indian currency and seek enhancement. The relevant para of the said judgment is extracted herein:

“9. If a person is working in Dubai, he earns in the currency of that country and spends also in that currency. So it is not open to the wife to just convert his income in Indian currency and then seek enhancement. The Court has to consider the cost of living as per the living standards in country where he is employed.”

11. The respondent is thus justified in his submission that the courts will have to consider the cost of living as per the living standard in the country where he is employed and mere earning ‘dollars’ cannot be the sole criteria to award exorbitant maintenance in favour of other spouse. Thus, this contention of the appellant does not appeal to this court and is hereby rejected.
12. There is no doubt that the appellant has been working with reputed multinational companies. Her own income affidavit reveals that her net income is approximately Rs. 1 Lac per month. There is no child from the wedlock and she has no other liabilities. Looking at the totality of the facts, we find that this is not the case where the appellant is unable to maintain herself. In fact, the earnings of the appellant are sufficient to maintain herself and give her the required comforts of life. The law on the subject as discernible from some of the judgments mentioned above is clear that when a spouse is qualified and has the capacity to earn, normally, interim maintenance is not to be granted. In a given situation, the courts have been granting some maintenance in a case where there is capacity to earn but some other factors prevent the spouse from earning despite making best

efforts. However, in a case like the present, where the spouse is qualified and is actually earning, interim maintenance under Section 24 need not be granted. We do not agree with the submission of the appellant that though she is earning a good amount of salary, she should still be given interim maintenance to bring her at par with the lifestyle of the respondent. The provisions of this section are not meant to equalize the income of the wife with that of the husband but are only to see that when divorce or other matrimonial proceedings are filed, either of the party should not suffer because of paucity of source of income and the maintenance is then granted to tie over the litigation expenses and to provide a comfortable life to the spouse. Where, however, both the spouses are earning and have a good salary, merely because there is some salary difference cannot be a reason for seeking maintenance. In the present case, what the appellant seeks is an equalization with the respondent which we are afraid cannot be granted under Section 24.

13. There may be some truth in the submission of the appellant that the Family Court had erred in its observations that the appellant is living in Sarita Vihar while actually she is living in Gurgaon. In our view, this factual error as to the place of abode of the appellant also cannot be of much avail to her. Both Gurgaon and Sarita Vihar are a part of the NCR and it really does not matter which of the two places is the place of residence of the appellant as long as she has a decent place to live and is in a position to pay the rent and have a decent standard of living more or less comparable to that of the respondent.

14. The Family Court in our view has rightly dismissed the application under Section 24 and we find no infirmity in the impugned order.
15. We, therefore, uphold the order of the Family Court dated 23.03.2018.
16. The present appeal is devoid of merits and thus, alongwith the pending application being CM No.18317/2018 is dismissed.

JYOTI SINGH, J

G.S. SISTANI, J.

FEBRUARY 12, 2019

//rd/ssc

