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

+ **MAT.APP.(F.C.) 209/2018**

VARSHA BHATIA

..... Appellant

Through: Mr. Anshu Mahajan, Mr. Karan Arora
and Mr. Lakshay Sharma, Advocates with
appellant in person.

versus

HIMANSHU KUMAR ARYA

..... Respondent

Through: Mr. Lal Singh Thakur and Mr. Harish
Kumar, Advocates

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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21.01.2020

1. The appellant/wife is aggrieved by an order dated 31.05.2018, passed by the learned Principal Judge (South), Family Courts, Saket, Delhi, whereunder an application moved by her under Section 24 of the Hindu Marriage Act, in a pending divorce petition filed by the respondent/husband under Section 12(1)(c) of the Hindu Marriage Act, has been dismissed on the ground that she is in possession of a portion of the house owned by the parents of the respondent, for which she was paying rent @ Rs.11,000/- per month till the parties had got married on 23.06.2015. Observing that since the appellant/wife was working in the past and had the capacity to pay rent of Rs.11,000/- per month to the respondent's mother prior to the marriage having taken place, she cannot claim that she is not in a position to maintain herself.

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2. Notice was issued on the present appeal on 24.08.2018, returnable on 10.10.2018. On 10.10.2018, proxy counsel had appeared for Mr. Lal Singh Thakur, Advocate for the respondent and sought time to place on record some relevant facts. Reply was directed to be filed by the respondent within four weeks and the appeal was adjourned to 24.01.2019. The record reveals that no reply has been filed by the respondent. However, learned counsel for the appellant states that he was served with a copy of the reply filed by the respondent in January, 2019.

3. On 24.01.2019, proxy counsel appearing for the counsel for the respondent had sought an adjournment and at her request, the appeal was adjourned to 25.02.2019. Again, a similar request for adjournment was made on behalf of the respondent on 25.02.2019 and the matter was adjourned to 09.04.2019. Thereafter, the appeal was taken up on 09.04.2019, 21.05.2019, 29.08.2019 and 19.11.2019. On the last two dates, a proxy counsel had appeared for the learned counsel for the respondent and had sought adjournments on the ground that the arguing counsel was unavailable. On 19.11.2019, while accommodating the request for an adjournment made on behalf of the counsel for the respondent, it was made clear that he would not be accommodated on the next date of hearing, i.e., today.

4. Today, the matter has been called twice but none had appeared on behalf of the respondent. In the post lunch session, Mr. Harish Kumar, Advocate appears and states that Mr. Lal Singh Thakur, Advocate is on his way to Delhi from Aligarh and requests that we await his presence. It is already 2:45 PM and there is no sign of learned counsel for the respondent. Though Mr. Harish Kumar, Advocate states that he is a junior associate in *MAT.APP.(F.C.) 209/2018*

the office of Mr. Thakur, he has not come with the brief and on being requested to address us on the merits of the appeal, he states that he is not in a position to do so. We are thus left with a reply to the appeal that the respondent was permitted to file, which is also not on record. Learned counsel for the appellant has handed over a copy of the reply served on him by counsel for the respondent for our perusal.

5. Brief relevant facts of the case as set up by the appellant/wife are that her marriage was solemnised with the respondent/husband on 23.06.2015 and the same was registered with the Registrar of Marriage, District Ghaziabad, UP. In August, 2016, the respondent/husband filed a petition for divorce on the ground of annulment claiming that his consent to the marriage had been obtained by fraud. During the pendency of the said petition, on 27.2.2017, the appellant/wife moved an application under Section 24 of the Hindu Marriage Act, claiming interim maintenance @ Rs.50,000/- per month.

6. It is not out of place to mention here that before the marriage of the parties herein was solemnised, the appellant was in a live-in relationship with somebody and has borne a daughter from the said relationship, who in the year 2015, was nine years old. It is the appellant's version that the respondent/husband was aware of the fact that she was in a live-in relationship earlier and had a child from the said relationship. Learned counsel submits that in fact, it was a love marriage and the parties were known to each other before their marriage because the appellant was a tenant in a portion of a residential premises situated at Savitri Nagar, Malviya Nagar, owned by the respondent's mother and the respondent, who was residing with his parents across the road, used to frequently visit her at

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the said premises. On finding that they were compatible with each other, the parties had solemnised their marriage against the wishes of their respective family members.

7. In the Section 24 application, the appellant/wife has averred that the respondent/husband possesses an MBA degree; he runs a motor garage; his parents own huge land and properties and he has a monthly income of Rs.2 lakhs from the rental properties. On the other hand, the appellant has described herself as a housewife, who was earlier working with a private company at Malviya Nagar but at the insistence of the respondent, she had resigned from her job. She is a matriculate but has not gone in for higher studies. The appellant had lost her father when she was two years old. Her parental side includes her widowed mother and two brothers older than her, who are residing in their own house in Govindpuri. Both the brothers are married and they are in the business of milk vending. The appellant has averred that she was in a live-in relationship with somebody and there is a girl child from the said relationship, who is in her care and custody. Stating that she has no other source of income, the appellant/wife claimed *pendentelite* maintenance @ Rs.50,000/- per month.

8. The maintenance application moved by the appellant/wife was hotly contested by the respondent/husband, who filed a reply in opposition. It was argued on his behalf that the respondent possesses a graduate degree in management, i.e, BBA; he is unemployed; the motor garage referred to by the appellant is owned by his father and that his father owns a small piece of agricultural land but he has no income from the said parcel of land or any rented property. It was also argued on behalf of the respondent that the appellant is a working lady and the very fact that she had taken a portion of

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the residential premises owned by his mother on a rent of Rs.11,000/- per month, goes to show that she has the capacity to earn and pay the rent. It was also contended that it was of her own choice that the appellant has elected not to work and she has also stopped paying the rent. It has been asserted by the respondent that the appellant is getting maintenance from the person with whom she was in a live-in relationship.

9. After considering the submissions made by both sides, the learned Family Court has dismissed the application for maintenance filed by the appellant/wife and aggrieved thereby, the present appeal has been filed.

10. Mr. Mahajan, learned counsel for the appellant/wife assails the impugned order on the ground that the learned Family Court failed to appreciate that the appellant is only a 12th class qualified lady who had left her job on the request of the respondent and it is nobody's case that she wanted to give up the job on her own; that the mere say of the respondent that the appellant is receiving maintenance from her "ex-husband" is neither here, nor there when no document has been placed on record to establish the said fact; that in any case, after the marriage of the appellant with the respondent, there was no question of her claiming any maintenance from her "ex-husband" as per law and that the learned Family Court has erred in holding that the respondent is not gainfully employed. Lastly it is submitted that the decision in the case of Rupali Gupta vs. Rajat Gupta in **MAT.APP.(F.C.) 143/2014** decided on 05.09.2016, cited in the impugned order is based on entirely different facts inasmuch as maintenance was declined to the appellant in the captioned case as she was a practicing Chartered Accountant for over a decade whereas the appellant herein is a class 12th pass with no means of education or scope of fresh employment **MAT.APP.(F.C.) 209/2018**

particularly since her 14 years old daughter is in her care and custody and there is no one else she can bank on for support.

11. At this stage, Mr. Lal Singh Thakur, Advocate for the respondent saunters into the court and states that he was held up in the Saket Courts. Though we were told otherwise, he concedes that he was not travelling from Aligarh to Delhi, as was stated by his junior colleague before us. Learned counsel has no explanation to offer for his absence all day long and neither has he an explanation for the reply not being on record till date though he states that he had filed it in January, 2019. He supports the impugned judgment and states that the appellant does not deserve a penny towards maintenance and the respondent is unemployed, he is still undergoing higher studies and is admitted in a course of MBA. However, he is unable to throw any light as to the College or University where the respondent studies and the academic year in which he is admitted.

12. Having carefully perused the impugned judgment and on considering the stand taken by both sides, we are of the opinion that the learned Family Court has erred in dismissing the Section 24 application filed by the appellant/wife for interim maintenance. It is unacceptable that the respondent/husband, who is 26 years old and holding a degree in BBA, continues to remain unemployed. The affidavit of assets, income and expenditure filed by the respondent is found to be extremely ambiguous. Except for writing “NA” in most of the columns relating to the statement of income and mentioning that he is dependent upon his parents, nothing material has been revealed by the respondent. We refuse to accept the submission made that the respondent has remained unemployed in all these years. Instead, we find merit in the submission made by learned counsel for

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the appellant that the respondent is running a motor garage alongwith his father at Savitri Nagar.

13. Simply because the appellant/wife had been paying rent @ Rs.11,000/- per month to the respondent's mother, who is the landlady, till the parties had got married on 23.6.2015, cannot be a ground to completely deprive her of maintenance. Though the respondent has refuted the submission made by the appellant/wife that she is unemployed, he has not placed anything on record to substantiate the said submission. The respondent has also not been able to show any other source of income that the appellant may have which she has withheld from the Family Court. That the appellant is only a matriculate, is also not denied by the respondent. The appellant/wife has not disputed the fact that she was earlier working in a private company at Malviya Nagar but has stated that it was at the insistence of the respondent that she had resigned from the said job.

14. In the above facts and circumstances, the impugned order is set aside as unsustainable and the respondent/husband is directed to pay a sum of Rs.15,000/- per month to the appellant/wife from the date of filing the application for maintenance, i.e., from February, 2017 onwards. The arrears of maintenance for the past three years shall be paid by the respondent in ten equal installments commencing from January, 2020. Maintenance for the month of January, 2020 at the rate mentioned above, shall be paid by the respondent to the appellant within one week from today. Henceforth, the maintenance shall be paid to the appellant on or before the 10th day of each calendar month. Any default in paying the maintenance will attract a penalty of Rs.50/- per day to be paid by the respondent to the appellant over and above the maintenance fixed, till the default is made good.

15. The appeal is allowed with litigation expenses assessed at Rs.15,000/- to be paid by the respondent to the appellant within one week from today alongwith the maintenance for the month of January, 2020.

HIMA KOHLI, J

ASHA MENON, J

JANUARY 21, 2020

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