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

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Decided on : 26th July, 2021

+ MAT.APP.(F.C.) 66/2021

MAHIMA CHATURVEDI

..... Petitioner

Through: Mr. Pratyush Sharma, Adv.

Versus

DEEPAK MALHOTRA

..... Respondents

Through: Mr. Kunal Sachdeva, Adv. with
respondent in person.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

% **JASMEET SINGH, J (ORAL)**

1. The present appeal has been filed by the appellant (wife) against respondent (husband) challenging an order dated 18.06.2020 passed by the Family Court, Dwarka, New Delhi.

2. As per the said order, the application dated 21.12.2014 filed by the appellant under Section 24 of HMA claiming maintenance *pendente lite* at the rate of Rs. 1,50,000/- per month, besides litigation expenses of Rs. 6,00,000/-, has been dismissed by the Family Court. Aggrieved by the said order, the appellant has filed the present appeal.
3. Briefly stating the facts giving rise to filing of the present appeal under Section 19 of the Family Courts Act are as under:
 - a. The appellant and the respondent were married on 12.12.2008 at New Delhi, according to Hindu Rights and Ceremonies.
 - b. The parties last resided together till 13.02.2011 in New Zealand and thereafter, the respondent left for India and around 09.02.2012 filed a petition under Section 13(i)(i-a) of the Hindu Marriage Act, 1955.
 - c. On 15.01.2014, the appellant filed an application seeking directions to the respondent to pay her travelling expenses for attending Court hearings and thereafter, another application dated 21.12.2014 under Section 24 of the Hindu Marriage Act, 1955 for seeking interim maintenance *pendente lite* at the rate of Rs. 1.5 lakhs per month plus litigation expenses of Rs. 6 lakhs besides the travelling expenses that she has to incur and has already incurred to travel from New Zealand to India to attend the litigation.

- d. The appellant joined employment as a Consultant with Lirik Infotech Private Limited on 17.12.2018.
- e. On 01.08.2019, the Ld. Family Court Judge directed '*both the parties to file their income affidavit along with statement of all their bank accounts for the last three years as well as income tax returns, if any for the last three years before the next date of hearing*'. The parties filed their financial affidavits as per the Kusum Sharma Judgment.
4. On 18.06.2020, the learned Presiding Judge, Family Court, Dwarka, dismissed the petition of the respondent under Section 13(i) (i-a) of the Hindu Marriage Act and also dismissed the application of the appellant under Section 24 of the Hindu Marriage Act. Aggrieved by the said order of dismissal, the appellant has filed the present appeal. The main ground urged by the appellant before us are:
- a. That the Appellant has been largely dependent on her parents, family and relatives for her sustenance, and the Respondent on the other hand was earning around Rs. 5,67,317/- per month excluding the bonuses and reimbursements.
- b. The appellant has not been employed or has been on unpaid leave for almost 32 out of 60 months from the date of filing her application under Section 24 till its adjudication. The details are as follows - 5 months in the year 2015, 2 months in the year 2016, 6 months in the year 2017, almost 12 months in the year

2018 and 2.5 months in the year 2019 and 4.5 months in the year 2020.

- c. As per the appellant, her average monthly net income between January, 2018 to July, 2019 was Rs. 34,634/- vis-à-vis the respondent whose average net monthly income was Rs. 3,76,586/-.
- d. It has been further stated and argued before us that the learned Family Court delayed the adjudication of Section 24 Application for a period of 5.5 years which worked unfairly and disadvantageously to the appellant.
- e. It has further been stated and argued before us that the appellant has taken huge loans to the tune of approximately 13 lakhs to contest the matrimonial litigations and travel to India to attend court proceedings. The appellant has travelled to New Delhi from New Zealand for about 8 times to attend Court hearings.
- f. Lastly, it has been submitted that the husband has not disclosed his true income and hence, adverse presumption needs to be drawn against him. The Ld. Family Court in its order dated 18.06.2020 failed to take into account the legal effect of the continuous and deliberate attempts by the Respondent to conceal his truthful income from the Family Court despite express guidelines in the judgments/orders of *Kusum Sharma v. Mahinder Kumar Sharma* from time to time.

5. The learned Family Judge has observed in its order dated 18.06.2020 that the Object and Intent of Section 24 is to support the spouse who has no independent source of income. The learned Family Court has relied on the income affidavit of the appellant to arrive at a conclusion that the appellant is drawing a salary of Rs. 85,000/- per month and relied on the judgment of this Court in case titled *K.N. vs R.G. Reported as MAT. APP(FC) no. 93/18 (date of decision – 12.02.2019)* to hold that the provision of Section 24, Hindu Marriage Act, are not meant to equalise the income of wife with that of the husband.
6. We have heard counsel for the parties and perused the record and the impugned order dated 18.06.2020 dismissing the application under Section 24.
7. It is an admitted fact that as per the income affidavit filed by the appellant she is drawing a salary of Rs. 85,000/- net and 1,05,000/- gross per month. It is further an admitted fact that the appellant is a qualified ACA. She has been having a regular source of income from the date of filing of her application. It is further an admitted fact that the appellant has no liability to maintain anyone from the aforesaid income of Rs. 85,000/-.
8. The Delhi High Court in case titled *K.N. Vs. R.G. (Supra)* (as also been relied upon by the Ld. Family Court) has categorically held that:

“where the spouse is qualified and is actually earning, interim maintenance under Section 24 need not be granted.....The provision 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 tide 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.”

9. Hence, we are clear that the appellant is a well-qualified professional and is drawing a salary of 85,000/- month which is adequate for a comfortable life. In *K.N. v. R.G.*, it has been held that the provision of section 24 are not meant to equalize the income of the spouses but only to see that no spouse should suffer due to paucity of income. The purpose to grant maintenance is to tide over litigation expenses and to provide a comfortable life to the spouse.
10. Lastly, the argument of the appellant that there has been an inordinate delay of 5.5 years in deciding her application under Section 24 and that has caused prejudice to her also needs to be rejected.
11. The appellant had filed CM (M) 1526/2019 challenging the Orders dated 01.08.2019, 27.08.2019, 23.09.2019, 24.09.2019 and 10.10.2019 passed by the learned Judge, Family Court, South-West District, Dwarka in HMA No.229/2017, titled *Deepak Malhotra vs. Mahima Chaturvedi*, on the ground that the learned Judge, Family

Court has not decided the application of the appellant under Section 24 of the Hindu Marriage Act.

12. This Court categorically held in the Order dated 23.10.2019 that:

“the facts of the present case show that the petitioner did not insist on a decision on her application under Section 24 of the Act till the case reached the stage of final arguments. It is only at this stage that the petitioner pressed for hearing of her pending application. The learned Judge, therefore, in my opinion, has rightly decided to take up this application for hearing along with the main petition. The approach of the learned Judge, Family Court cannot be said to be warranting any interference from this Court.”

13. The said judgment of the Delhi High Court has not been challenged by the appellant, which clearly shows that the delay in disposal of Section 24 application was attributable to the appellant and no fault can be found either with the Family Court or the respondent.
14. It will also be relevant to mention here that the impugned order is dated 18.06.2020 and the appellant has approached this Court after a period of 1 year also gives credence to the observation of the learned Family Court that respondent (appellant herein) has a source of income that is why she had not pressed for maintenance under Section 24.

15. In view of the above, we find no reason to interfere in the Order dated 18.06.2020 of the Judge of the Family Court, New Delhi and the present appeal is devoid of merit and hence, dismissed.

JASMEET SINGH, J

VIPIN SANGHI, J

JULY 26, 2021/dm