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

+ **Date of Decision: 07.09.2021**

% MAT.APP.(F.C.) 86/2021, CM APPLs. 30130-30131/2021

RAJESH KUMAR YADAV Petitioner

Through: Mr. Varun Jain, Mr. Navin Kumar
and Mr. Sumit Singh, Advs.

versus

SEEMA YADAV Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

JASMEET SINGH, J. (ORAL)

1. The present appeal has been filed under Section 19 of the Family Courts Act, 1984 read with Section 28 of the Hindu Marriage Act, 1955 against the order dated 18.12.2020 passed by the Learned Principal Judge, Family Court, South-West, Dwarka, New Delhi in HMA Case No. 655/2017 titled '*Rajesh Kumar Yadav vs. Seema Yadav*'.

2. Vide the said order, the Family Court has directed the appellant to pay maintenance *pendente lite* at the rate of Rs. 1,00,000/- per month, to the respondent, as well as the two children from the date of filing of the application i.e., 27.01.2018 along with litigation expenses of Rs. 21,000/-.

3. The Family Court has further directed that any amount paid by the appellant on account of interim maintenance, during the pendency of the petition would be adjusted in calculating the total amount of arrears.

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4. Briefly stated the facts giving rise to the filing of the present appeal are as under.

5. That the marriage between the appellant and respondent was solemnized on 28.02.2000 and out of the wedlock two children, –a boy (Date of Birth: 11.04.2001), and a girl (Date of Birth: 04.03.2006) were born. Both the children are living with the respondent in the house of the father of the appellant.

6. The appellant filed a divorce petition under Section 13(1)(ia) and 13(1) (iii) of the Hindu Marriage Act, 1955 on 23.08.2016 for dissolution of marriage. The said petition is still pending adjudication.

7. On 27.01.2018, the respondent filed an application under Section 24 of the Hindu Marriage Act, 1955 seeking maintenance *pendente-lite* at the rate of Rs. 1,43,240/- per month. In addition, the respondent also claimed Rs. 1,50,000/- towards litigation expenses.

8. The respondent in the application stated that she does not have any income and, hence, is unable to maintain herself as well as her two minor children. Both the children are studying in Amity School, Gurugram and she has to pay for their education as well as other day to day expenses. It has been stated that even though the respondent is residing in the house of her mother-in-law, she is paying rent to the tune of Rs. 20,000/- each month. On the other hand, she had also stated in her application that the appellant is earning Rs. 3,50,000/- each month, out of which Rs. 25,000/- is being earned as rental income from a commercial property situated at Bawana,

Delhi and Rs.3,25,000 is being earned from his business. The respondent in his reply has denied the averments.

9. Both the parties have also filed their income affidavits, before the Family Court, in which the respondent stated that her educational qualification is B.A. (Pass), and she is a housewife. She stated that she is spending Rs. 52,500/- per month on the education of the children including school fee, private tuition, entertainment, sports, etc, out of which, only the school fee is being paid by the appellant and the rest is being paid by her. She is spending Rs. 20,000/- on rent, Rs. 35,000/- on groceries and household items, Rs. 6,000/- on electricity, Rs. 2500/- on a part time maid, approximately Rs. 4500/- on transport etc.

10. On the other hand, the appellant holds a Post-Graduate Diploma in Business Administration and, as per his income affidavit, he is earning Rs. 1,00,000/- per month. In addition, he is getting rental income of Rs. 35,000/- and an additional Rs. 10,000/- per annum from Interests on bank deposits and FDRs.

11. The appellant has further stated that he is running his business through two companies namely, M/s Nipun Landmark Private Limited and M/s Vanisha Infrastructures Private Limited, having annual turnover of Rs. 15,00,000/- but both the companies were running into losses. As per his affidavit, he is incurring an expenditure of Rs.75,000/- to Rs. 90,000/- per month on the children, including school fees and maintenance of the children.

12. The most important aspect in the latest income affidavit (filed on 29.08.2017) of the appellant is his immovable properties. As per his affidavit, the appellant owns: -

- a) Industrial Unit in the Bawana Industrial Area having estimated market value of Rs. 65 lakhs.
- b) Approximately 2.5 acres of Agricultural land in Faridabad, Haryana, market value being Rs. 2 crores.
- c) 3 acres of Agricultural land in District-Gurgaon, Haryana, market value of approximately Rs. 1.5 crores.
- d) A residential flat in Gurgaon, jointly held with the respondent, with an approximate value being Rs. 75 lakhs.
- e) A commercial property situated at Khasra No.28/23/2, Behind Shivalya Mandir, Village Badli, Delhi, with an approximate market value of Rs. 2.5 crores.

13. The Family Court has carefully analyzed the material on record and relied on *Bharat Hegde vs. Saroj Hegde* 140 (2007) DLT 16, which held that, in India parties do not truthfully reveal their income and that the truthful income of parties never surfaces. The Family Court also went on to rely on the judgment in *Jayant Bhargava Vs. Priya Bhargava* (2011) 181 DLT 602 to reiterate the same principle of the tendency of spouses not to reveal their true income.

14. The Family Court in the impugned order has assessed the income of the appellant to be Rs.2,00,000/- and relied on the judgment of *Annurita Vohra Vs. Sandeep Vohra 110 (2004) DLT 456* wherein it was observed:

"In my view, a satisfactory approach would be to divide the Family Resource cake in two portions to the Husband since he has to incur extra expenses in the course of his making his earning, and one share each to other members"

15. Thus, the Family Court directed the Appellant to pay Rs.1,00,000/- each month to the Respondent as well as to both the children from the date of filing of the application.

16. The Appellant being aggrieved by the said judgment has filed the present appeal, with the primary ground of challenge being that the Family Court, without giving any reason, has disbelieved the income affidavit filed by the Appellant.

17. It has been argued before us, that as per the income affidavit of the Appellant, he is earning Rs. 1,00,000 from his company and Rs. 35,000 from rental income, which comes to a total of Rs.1,35,000. He has further argued that no rent agreement or receipts have been filed by the Respondent to show that she is paying Rs. 20,000 to her mother-in-law as rent. The appellant has also relied upon the ITRs of the respondent to say that she has been filing the Income Tax Return with the following gross income: -

Sr. No.	Assessment Year	Gross Total Income
1	2011-12	6,17,441/-
2	2012-13	6,46,250/-
3	2013-14	6,58,416/-
4	2014-15	6,64,225/-
5	2015-16	3,02,592/-
6	2016-17	2,73,652/-

18. It has further been argued that both his companies, namely, M/s Nipun Landmark Private Limited and M/s Vanisha Infrastructure Private Limited, have been running into financial losses and the two companies have been struck out by the Ministry of Corporate Affairs in the year 2017-18. It is the submission of the Learned Counsel for the appellant that none of the above facts had been taken into account by the Family Court while passing the impugned order.

19. We have heard Learned Counsel for the appellant and have gone through the impugned order and the documents on record. We are unable to agree with any of the contentions of the appellant. It is an admitted position that the appellant owns the following immovable properties:

- a) Industrial Unit in the Bawana Industrial Area, with an estimated market value of Rs.65 lakhs
- b) Approximately 2.5 acres of Agricultural land in Faridabad, Haryana, with an estimated market value of Rs.2 crores

- c) 3 acres of Agricultural land in District-Gurgaon, Haryana, with an estimated market value of Rs.1.5 crores
- d) A residential flat in Gurgaon, jointly held with the respondent, which has an approximate market value of Rs. 75 lakhs.
- e) A commercial property situated at Khasra No.28/23/2, Behind Shivalya Mandir, Village Badli, Delhi which has an approximate market value of Rs. 2.5 crores

20. A bare perusal of the list of immovable properties clearly shows the appellant to be a man with substantial resources, having immovable properties, with a value of more than Rs. 6 crores. We cannot lose sight of the fact that, the parties in matrimonial litigation do not:

- a) Disclose their true income.
- b) Value the assets owned by them, correctly.

21. Despite the above, the value of immovable property owned by the appellant, as per his own calculation is about Rs. 6 crores. It is the duty of the husband to maintain and look after the educational and other needs of the children, especially when the wife is not working and/ or is unable to do so. The Supreme Court, while deciding a maintenance petition in *Manish Jain v. Akansha Jain* 2017 15 SCC 801 held that:

“.....The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the court should mould the claim for maintenance based on various factors brought before it.”

22. The Supreme Court also observed in *Rajnish v. Neha* (2021) 2 SCC 324:

“(ii) A careful and just balance must be drawn between all relevant factors.

The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home.

The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e., maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.”

23. Hence, while deciding a petition for maintenance, the financial capacity of the husband, his earning capacity, his own personal expenses, the dependent family members who he is compelled to maintain under the law, are all aspects that must be taken into consideration, to decide the amount of maintenance to be paid. The Court, while deciding such a petition must give due regard to the standard of living of the wife and children, as well as the constantly escalating inflation rates and costs of living. The plea of the appellant that his income is not sufficient cannot absolve him from paying the respondent and his two children their due maintenance.

24. The averments made in the Appeal further show the concealments made by the appellant. In para ‘S’ of the appeal, the appellant has claimed that he has sold the land at Bawana, but at the same time, he has

intentionally kept quiet about the consideration received. The 1.5 acres of agricultural land at Faridabad, and 3 acres of agricultural land in Gurgaon are shown to be devoid of any income, as per the said paragraph. We are totally unconvinced about these averments, and do not believe them. No explanation is furnished, why these lands are not being cultivated as they are agricultural lands.

25. The grounds in the appeal raised by the appellant, namely, that no rent agreement or receipts have been filed by the respondent to show that she is paying Rs.20,000 as rent to her Mother-in-Law, or that she is having Income, as she is filing Income tax returns, are neither relevant nor germane. The Family Court has not believed the version of the Respondent wife that she is paying rent to her mother-in-law, and the determination of the amount of maintenance has not been influenced by the said expenditure claimed by the Respondent.

26. Before the Family Court, the Appellant had only filed the ITR of the year 2014-15 of the respondent, which was not looked into by the Family Court, as it was observed by the court that the current financial position of the parties is required to be seen for the determination of maintenance amount. We do not find anything wrong in this approach of the Family Court, particularly when the Appellant did not produce any material to show that the Respondent was gainfully employed during the period for which she was claiming maintenance.

27. Thus, it is clear to us that:

- a) The appellant is a man of substantial means.

- b) The respondent does not have any substantial source of income.
- c) The children are in the exclusive care and custody of the respondent and are studying.
- d) The claim of the appellant that he is earning only Rs. 1,00,000/- per month from his business does not appear to be true and the appellant appears to be suppressing his true income.
- e) Thus, the amount of Rs. 1,00,000/- as awarded by the Family Court for maintenance *pendente-lite* for the respondent as well as both children, is neither excess nor exaggerated.

28. In this view of the matter, we find no infirmity in the impugned order dated 18.12.2020 passed by the Learned Principal Judge, Family Court, South-West, Dwarka, New Delhi in HMA Case No. 655/2017 titled '*Rajesh Kumar Yadav vs. Seema Yadav*'.

29. We dismiss the present Appeal as being without merit.

JASMEET SINGH, J

VIPIN SANGHI, J

SEPTEMBER 07, 2021/dm