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

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Date of Decision: 07.10.2021

% MAT.APP.(F.C.) 98/2021 & CM APPLs. 35556 - 57/2021,

RAJAN WANCHOO

..... Appellant

Through: Ms. Ruchi Munjal

versus

SIKHA RAINA

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

JASMEET SINGH, J. (ORAL)

1. We have heard arguments in this appeal and have dismissed the said appeal. The reasons for the dismissal of the appeal are as under:
2. The present appeal has been filed by the Appellant (husband) against the Respondent (wife) under Section 19 of the Family Courts Act, 1984 assailing the impugned order dated 26.07.2021 passed by the Principal Judge, Family Court, Patiala House, Delhi wherein the Principal Judge has awarded a sum of Rs.15,000/- per month as maintenance to the Respondent wife.
3. Briefly stating the facts giving rise to filing of the present appeal are as under:
 - i. The marriage between the Appellant-husband and the Respondent-wife was solemnized on 31.12.2006 in accordance with

Hindu rites and ceremonies. There is no child from the wedlock and the parties have been living separately since the year 2016.

ii. The Appellant-husband filed a petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 seeking dissolution of marriage by decree of divorce being HMA No.384 of 2018 erstwhile HMA No.265 of 2017. The said petition is still pending adjudication.

iii. In July, 2017 the Respondent filed an application under Section 24 of the Hindu Marriage Act, 1955 seeking *pendente lite* maintenance.

iv. On 17.10.2017, the Family Court directed both the parties to file their income affidavits, pursuant to which, both the parties had filed their detailed income affidavits.

v. In January 2019, the Appellant-husband stated that he had lost his job owing to his psychological condition, and thereafter he had moved another application before the Family Court to allow him to file fresh income affidavit as per the change in facts and circumstances, which was so permitted. The Respondent wife also re-filed her income affidavit in January 2019.

vi. As per the first income affidavit dated 07.01.2019, the Respondent had disclosed that she is a Graduate and a housewife, wherein she had disclosed her income as nil. She claimed monthly expenses to the tune of Rs. 40,000/-. The Respondent-wife did not own any immovable assets as per the affidavit. As per the second income affidavit filed by the Respondent-wife dated 24.05.2019, her monthly income still remains nil and her expenses were reduced from Rs.

40,000 to 20,000/- per month which included household expenses, transport and medical expenses.

vii. As per the first income affidavit of the Appellant husband dated 16.03.2017, he is M.Sc. (Physics) and has also done a Diploma in Computer Management from NIIT, Delhi and was employed as a Computer Programmer with USA based company called '*Compansol*'. The Appellant-husband was drawing a salary of Rs. 50,000/- per month. As per the said affidavit, between 2005 and 2007, the Appellant husband had previously worked at '*Smartech Interactive Pvt. Ltd*' in Faridabad, Haryana and had been receiving a salary of Rs.22,000/- per month therein.

viii. In the affidavit, the Appellant-husband did not give any details of his monthly expenses, but he had indicated that he had spent Rs. 18 lakhs between 2006 and 2016 towards electricity bills, water bills, gas bills, mobile bills and the maintenance of his parent's flats at Vasant Kunj and Noida. The Petitioner also did not own any immovable property. As per the second income affidavit of the Appellant husband dated 11.03.2019, he stated that he was unemployed since 01.07.2018 as his employment was terminated, thus his income became nil and all his expenses were being borne by his father and sister.

ix. In the written submissions, the Appellant husband had stated that the Respondent-wife is not entitled to maintenance as she is qualified and is competent to take up a decent remunerative job, and also that she has prior work experience, while on the other hand, the

Appellant-husband is a patient of depression, undergoing treatment at AIIMS, and has lost his job on 12.06.2018. Since the said date, the Appellant has been dependant on his retired father and sister. The Appellant, before the learned Family Court, had further stated that he is 56 years of age and is unable to get any form of employment as he is nearing retirement age.

4. The Family Court has correctly relied on the broad parameters for determining the quantum of maintenance, namely:
 - (i) Income and Assets of the parties.
 - (ii) Expenses and Liabilities of the parties.
 - (iii) Position and Status of the parties.
 - (iv) Reasonable requirements of both the parties.
5. The Family Court has further relied on the Medical Board constituted upon the Family Court's order dated 22.08.2019, at AIIMS, to examine the Appellant-husband as to whether he can depose in the Court and can with stand cross examination and his capacity to work or not work in any form of employment. The Medical Board submitted its report on 24.10.2019 where it had opined that:

"Based on the diagnosis, his clinical condition is not contraindicated to working and currently he is fit enough to stand cross-examination".
6. A bare perusal of the same clearly shows that the Appellant-husband is in a position to work and is adequately qualified. It seems to us that the Appellant husband has created this bogey of suffering from depression

and his inability to work, only to deprive the Respondent of her claim to maintenance. The Family Court has also concluded that the Appellant-husband has not brought any material on record to show whether he resigned or was terminated from his previous job.

7. That being so we have no hesitation in reiterating the settled legal position that the husband is under legal and moral obligation to maintain his wife.
8. This court has depreciated the practice of husband creating excuses and showing his inability to work or gain meaningful employment on the account of depression and physical age. In *Banvesh Lal Malhotra v. Alka Malhotra* (MAT. APP. (FC) 15/2020), this court after relying on *Mamta Jaiswal Rajesh Jaiswal* (2000) 3 MPLJ 100 and *Yashpal Singh Thakur v. Smt Anjana Rajput* (2001) MP 67 had concluded that:

“10. Section 24 will also not come to the rescue of a spouse who is able-bodied, competent and qualified to generate revenue and income, but on account of laziness or other factors, is not putting his/her skills to optimum utilisation. If despite reasonable efforts the spouse is not able to earn a livelihood, it may be a different thing. It is not the case of the Appellant before us that despite him willing and ready to do catering business, he is unable to generate work. The case set up before us is that he is incapable of doing work on account of his old age, mental state and knee problem.

*11. The objective of Section 24 of the Hindu Marriage Act, 1955 was laid down by the Madhya Pradesh High Court in **Mamta Jaiswal v. Rajesh Jaiswal** (2000 (3) MPLJ 100):*

“.....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 insolents as well as idlers so also does not want an army of self-made lazy idlers. Everyone has to earn for the purpose of maintenance of himself or herself, at least, 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 cannot 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 effort are unable to support and maintain themselves and are required to fight out the litigation jeopardising their hard earned income by toiling working hours.”

12. In *Smt Kanchan w/o Kamalendra Sawarkar v. Kamalendra Sawarkar* (AIR 1992 Bombay 493) the Bombay High Court held as follows:

“The non-applicant-husband is mentally and physically well bodied person. He has a skill of a particular business. There is no handicap for him to earn bare minimum to support his livelihood. Merely because his business is closed, it cannot be held that he has no source to earn. Since the wife is in the employment, the husband cannot make himself wholly dependent on her income through a device of section 24 of the Act. In absence of any handicap or impediment to earn, to grant maintenance to such able bodied person equipped with skill would promote idleness. It is opposed to spirit of section 24 of the Act. The trial Court was wholly without justification in awarding maintenance in favour of the non-applicant-husband. The impugned order therefore cannot be sustained.”

13. In the matter of Yashpal Singh Thakur v. Smt. Anjana Rajput (2001) MP 67, the High Court held:

“In the case at hand it can be irrefutably concluded that the husband petitioner has, by his own conduct decided to lead a leisurely life, and has made no attempts to earn money which he is capable of earning. He cannot afford to incapacitate himself and sustain an application under Section 24 of the Act. It will be an anathema to the very purpose of the said provision.”

14. In this view of the matter, we find that the Appellant before us has culinary skills; was a Chef and had been running a catering business till January - February, 2019. Despite being able-bodied and skilful, the Appellant claims to be idle for no apparent reason. If the provision of Section 24 is permitted to be invoked in such like cases, it will only lead to a growing population of self-made, lazy idles. This will not only be against the aim and goal of Section 24 of the Hindu Marriage Act, but also adversely affect the health of the society.”

9. As way back as 2015, the Supreme Court of India in *Shamima Farooqui v. Shahid Khan* (2015) 5 SCC 705 had stated:

“Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job, or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance Under Section 125 Code of Criminal Procedure, unless disqualified, is an absolute right”

This being the position in law, it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.”

10. Hence, we have no hesitation in holding that the Appellant is seeking to create a bogey of being unable to work, even though the Medical Board has opined that the Appellant is not contraindicated to working. And is an adequately qualified individual. In light of the above fact, we cannot allow the Appellant to sit idle, under the guise of depression and old age, just to avoid paying maintenance to the Respondent.
11. Thus, this court cannot accept the ipse dixit of the Appellant that he is unable to work and cannot get employment anywhere. The Appellant is qualified, competent and can indeed generate revenue and income, for both himself and his wife, but on account of evading maintenance proceedings, is choosing not to work. We cannot allow the Appellant, from his duty as a husband to shirk away his responsibility of maintaining his wife.

12. In this view of the matter, we find that the Appellant before us is well qualified, able-bodied and was employed until the maintenance proceedings commenced. The Appellant, despite the findings of the Medical Board, is choosing to remain idle for no apparent reason. If the petition of the Appellant is allowed in such cases, it will lead to a large population of self-made, lazy idles just so they can avoid paying adequate maintenance to their spouses. This will not only go against the aim of Section 24 of the Hindu Marriage Act, but also against the constitution and welfare of the society at large.
13. The Family Court has discussed and appreciated the evidence before it and we find no perversity in their order. In the entire gamut, the amount of Rs. 15,000/- awarded by the Family Court is neither excessive nor arbitrary and is based on a correct appreciation of facts and law.
14. Thus, we find no infirmity in the impugned order dated 26.07.2021 and the present appeal is dismissed being devoid of merits.

JASMEET SINGH, J

VIPIN SANGHI, J

OCTOBER 07, 2021/'ms'