



* IN THE HIGH COURT OF DELHI AT NEW DELHI
% Reserved on: 04th April, 2022
Decided on: 19th April, 2022

+ **MAT.APP.(F.C.) 87/2020**

ANITA SAXENA Appellant
Represented by: Sh. Prashant Diwan & Ms. Mishika
Vig, Advocates.

versus

AJIT SAXENA Respondent
Represented by: Mr. Mahipal Singh, Advocate.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G E M E N T

NEENA BANSAL KRISHNA, J.

CM APPL. 11898/2020 (Delay of 90 days in filing appeal)

1. By this application, the appellant seeks condonation of 90 days' delay in filing the appeal.
2. For the reasons stated in the application, delay of 90 days in filing the appeal is condoned.
3. Application is disposed of.

MAT.APP.(F.C.) 87/2020

1. Ms. Anita Saxena (*hereinafter referred to as 'appellant'*) has filed the present appeal under Section 19 of the Family Courts Act, 1984, challenging the impugned order dated 22nd November, 2019 passed by the learned



Family Judge, North-West District, Rohini, Delhi, under Section 24 of the Hindu Marriage Act, 1955 (*hereinafter referred to as 'HMA'*), whereby the learned Principal Judge had granted the *pendente lite* maintenance under Section 24 of the HMA to the appellant in the sum of ₹1,500/-, in addition to ₹8,500/- under Section 125 of Criminal Procedure Code, 1973 (*hereinafter referred to as 'Cr. P.C.'*) which Mr. Ajit Saxena (*hereinafter referred to as 'respondent'*) is already paying.

2. The appellant and the respondent got married on 27th November, 2010 according to Hindu rites and customs and no child was born from the said wedlock. Differences arose between the parties and the appellant filed a petition under Section 125 of Cr. P.C. for grant of maintenance. The matter was settled in *Lok Adalat* wherein the husband-Ajit Saxena voluntarily undertook to pay an amount of ₹8,500/- per month to the appellant and the petition was disposed of vide order dated 08th July, 2017. During the proceedings under Section 125 of Cr. P. C., the parties were referred to the Counselor and they mutually agreed to live together in the matrimonial home in Mayapuri, Delhi. The appellant joined the company of the respondent on 27th March, 2017 and resided together till 08th July, 2017. Differences again crept up as according to the appellant, the parents of the respondent always taunted her and her family members and pressurized her day in and day out to bring more cash and luxurious items from her parental home. She also claimed that she was always ill-treated by the respondent-husband and his family members and so also her parents or other family members, whenever they visited her in-law's house.

3. The respondent then filed a Divorce petition under Section 13(1) (ia) of HMA against the appellant on 05th July, 2017. The appellant herein



sought interim *pendente lite* maintenance under Section 24 of the HMA. The appellant claimed that during her stay in matrimonial home, she came to know about the lavish standard of living of the respondent. The respondent is working as Art Director at Vermillion Communication Pvt. Ltd. and earning ₹70,000/- as per his appointment letter dated 04th July, 2016. He also works on contractual basis to design official websites for three to four Companies and earns ₹25,000/- from per website. He has a monthly income of about ₹1,00,000/- . In addition, he has LIC policies in his name for which he is paying a handsome amount of premium. He has also visited abroad which can be verified from his passport. The respondent has also been provided with a chauffeur-driven car by his Company and he maintains expensive gadgets, like mobile, laptop etc. He has other amenities, like refrigerators, air-conditioner and other electronic gadgets in his house. He has bank accounts in ICICI Bank, Mayapuri Branch; Bank of India, Mayapuri Industrial Area Branch; Canara Bank, Basanth Lok Vasant Vihar Branch; and State Bank of India, Subhash Nagar. It is claimed that the respondent is a man of high standard of living and maintains a luxurious and lavish lifestyle.

4. The appellant has further stated that she is a graduate and has always led a life of a house-wife. At present, she has no source of income and is dependent upon her parents with whom she is residing, for all her expenses and requirements. The father of the appellant is retired, while the mother is a house-wife. She has claimed ₹55,000/- to meet the litigation expenses, in addition to ₹50,000/- per month, which is half the income of the respondent, to be able to live with the same standard as of the respondent.



5. The respondent by way of his reply has explained that he was earlier having a monthly income of ₹70,000/- but now he gets only ₹37,000/-, including perks, as the performance of the respondent regressed on account of matrimonial disputes. He was removed from his job w.e.f. 01st October, 2018 to 30th November, 2018. He is now getting a gross salary of ₹37,000/- p.m. From his income, he is paying ₹25,000/- per annum as insurance premium and also paying ₹10,000/- per month towards rent and ₹3,000/- per month towards water and electricity bills. He is also paying ₹10,000/- per month as maintenance to his parents w.e.f. 01st October, 2017, pursuant to the orders of the Senior Citizen Maintenance Tribunal, West Delhi. He has further explained that he has only two bank accounts, namely, ICICI Bank and State Bank of India. He has denied that he is living a luxurious life but claimed that he is residing in a rented accommodation.

6. The respondent has further claimed that the appellant is highly qualified being a graduate and is earning ₹18,000/- per month from tuitions. Besides this, she is getting ₹8,500/- per month from the respondent in terms of the order under Section 125 of Cr. P.C. The claim of the appellant for enhancement of maintenance was, therefore, refuted.

7. The learned Principal Judge, Family Court vide impugned order dated 22nd November, 2019 considered all the facts and granted an additional sum of ₹1,500/- per month, in addition to ₹8,500/- which the appellant is already getting under Section 125 of Cr. P.C. Maintenance of ₹10,000/- per month has thus, been awarded to the appellant.

8. Aggrieved by the said order, the present appeal has been filed.

9. The main grounds of challenge are that the appointment letter of the respondent clearly reflected his designation as Art Director with a monthly



salary of ₹70,000/- per month. The respondent has deliberately filed manipulative documents, reflecting reduction in salary and has taken a sham and evasive plea of reduced salary with the sole purpose of evading payment of maintenance to the appellant. It is difficult to comprehend how a person can agree to work on the same post with the same designation in the same Company with more than half the reduction in his salary. It is evident that this sham plea of reduction in his salary has been taken only to defeat the *bona fide* claim of the appellant.

10. It is further asserted that the respondent has filed the divorce petition in a cleverly-preplanned manner, which can be inferred from the settlement Agreement dated 02nd October, 2017, apparently arrived at between him and his parents soon after the filing of the divorce petition. It is evident that the maintenance being given to the parents is just an eyewash in order to evade the future claim of the maintenance to the appellant. The respondent as well as his parents have always been residing together under the same roof and the question of giving maintenance in the sum of ₹10,000/- per month does not arise. Furthermore, no such maintenance has been sought by the respondent's parents from the other two brothers of the respondent, who are financially sound. Even otherwise, the father of the respondent has retired from the Government job and is drawing pension. In fact, the respondent and his parents are hand in glove and have entered into an uncontested settlement for payment of maintenance of ₹10,000/- per month to them with an ulterior motive of evading the claim of maintenance of the appellant. The respondent has also not disclosed true and complete facts in his affidavit of income which is incomplete and evasive.



11. The appellant has placed reliance on the decisions of the Hon'ble Supreme Court reported as AIR 2014 SC 2875 Bhuwan Singh Mohan vs. Meena, Jasbir Kaur Sehgal vs. The District Judge Dehradun and 2015 (4) Scale 521 Shamima Farooqui vs. Shahid Khan in support of her claim for maintenance.

12. Submissions heard.

13. Admittedly, the divorce petition under Section 13(1) (ia) of the HMA has been filed against the appellant by the respondent in July, 2017. The respondent has not disputed that he was employed as Art Director in Vermillion Communication Pvt. Ltd. and was getting a monthly salary of ₹70,000/-. The claim of the appellant that in addition, he does contractual work of designing websites for three to four Companies for which he gets ₹25,000/- per website, has also not been seriously refuted by the respondent.

14. The respondent has relied upon the letter dated 04th June, 2017, according to which, his salary was reduced from ₹70,000/- to ₹30,000/- w.e.f. 01st June, 2017. It is difficult to comprehend that a person who is having technical knowledge about the website designing and is employed in a Company on a monthly salary of ₹70,000/- per month would suddenly suffer a slash of salary by more than half from 01st June, 2017 without there being any reason or cause. It is not believable that a person would continue to work in the same job and in the same Company with reduced salary by more than half. Interestingly, the respondent has claimed that he was removed from his job w.e.f. 01st October, 2018 to 30th November, 2018. The respondent has also relied upon an e-mail dated 21st July, 2019 for tendering his resignation to his employer i.e., Vermillion Communication Pvt. Ltd. by giving one month Notice till 01st June, 2019, again without any reason. The



absurdity of the defence of respondent is evident from his own contradictory stands; he joins and leaves his job when convenient and suffers salary cut without any reason.

15. The respondent then relies upon a job offer letter dated 19th June, 2020 of 'Bigcolours', offering him a position of Graphic Designer on a remuneration of ₹15,000/-. It is claimed by him that he is suffering on account of unstable and unsecured job due to COVID-19. Interestingly, it is only a job offer letter which has been placed on record but the respondent has not filed his appointment letter or his bank statement to reflect his correct financial position.

16. Further, it is claimed by the respondent that he is paying ₹10,000/- per month to his parents, pursuant to a settlement arrived at in October, 2017 between him and his parents. Even though, his father is a retired Government servant and the respondent has two other brothers who are equally capable to support the parents, the respondent has conveniently undertaken to pay the maintenance, quite evidently, because the appellant had filed a petition for maintenance in March, 2017.

17. It cannot also be overlooked that he has LIC, for which he is paying an annual premium of ₹25,000/-.

18. The appellant has not specifically denied of not taking tuitions or earning ₹10,000/- per month. However, merely because the appellant is earning some money cannot be a reason for the respondent to shirk his responsibility to maintain the appellant. The respondent was earning ₹70,000/- per month. He is a person with technical expertise and it is not believable that with the passage of time, his income has decreased.



19. Considering the qualifications and the expertise of the respondent, the impugned order is modified and the maintenance is enhanced to ₹15,000/- per month, (including ₹8,500/- p.m. being paid under Section 125 of Cr. P.C.), from the date of filing of the application till the disposal of the appeal. The litigation expenses are also enhanced from ₹8,000/- to ₹15,000/-. The arrears of the balance amount be paid in eight monthly installments, in addition to the monthly maintenance.

20. The appeal is accordingly, allowed.

(NEENA BANSAL KRISHNA)
JUDGE

(MUKTA GUPTA)
JUDGE

APRIL 19, 2022
S.Sharma

मात्यमेव जयते