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

% *Date of decision: 07th August 2023*

+ **MAT.APP.(F.C.) 201/2023 & CM APPLs. 35230/2023, 35231/2023, 35232/2023**

MOHIT MITTAL

..... Appellant

Through: Mr. J.K. Bhola, Advocate with
appellant in person.

versus

KANIKA JAIN

..... Respondent

Through: Mr. Yakesh Anand & Mr.
Akshay Thakur, Advocates.

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+ **MAT.APP.(F.C.) 202/2023 & CM APPLs. 35233/2023, 35234/2023, 35235/2023**

MOHIT MITTAL

..... Appellant

Through: Mr. J.K. Bhola, Advocate with
appellant in person.

versus

KANIKA JAIN

..... Respondent

Through: Mr. Yakesh Anand & Mr.
Akshay Thakur, Advocates.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present Appeals under Section 19 of the Family Courts Act has been filed on behalf of the appellant/husband against the impugned Order dated 19.04.2023 *vide* which the two Applications under Section 24 of the Hindu Marriage Act, 1955 in HMA No. 1496/2018 and HMA No. 843/2018 claiming maintenance in the sum of Rs. 88,000/- per month or one-time



expense of Rs. 4-5 lakhs as maintenance and litigation costs respectively on the ground that due to multiple litigations initiated by the respondent/wife against him, were dismissed.

2. The appellant/husband was married to the respondent/wife on 27.04.2016 as per the Hindu rites and ceremonies.

3. Allegedly, the respondent/wife deserted the appellant/husband on 02.07.2016 i.e., after about two months of marriage.

4. **The appellant/husband** filed the petition bearing HMA No. 1496/2018 under Section 12(1)(c) read with Section 13(1) (i-a) of the Hindu Marriage Act, 1955 for divorce and the **respondent/wife** also filed petition bearing HMA No. 843/2022 under Section 13(1) (ia) read with Section 13(1)(ib) of the Hindu Marriage Act, 1955 for grant of divorce; both the petitions are pending trial.

5. During the pendency of the aforesaid two divorce petitions, the appellant sought maintenance in one case and litigation costs in the other HMA petition under Section 24 of the Hindu Marriage Act, 1955 from the respondent/wife.

6. *Vide* common Order dated 19.04.2023, the learned Principal Judge dismissed both the Applications under Section 24 of the Hindu Marriage Act, 1955 of the appellant/husband. Aggrieved, the present Appeals have been preferred by the appellant/husband.

7. The appellant/husband has asserted that till July, 2017, he was working with M/s. Fidelity Information Service (FIS) as IT Architect and he thereafter joined as Senior Architect with M/s. Sirion Labs. It is claimed by the appellant that due to multifarious litigations against him, he lost his job and thereafter, it became very difficult to get a new job for him, despite



making all efforts. The appellant/husband using his contacts in United States of America (USA) to start a Recruitment Outsourcing Process Business in September, 2018, but the same also ended in a fiasco due to a false FIR No. 311/2017 filed by the respondent/wife in which the appellant/husband even remained in judicial custody.

8. The appellant/husband considered to start a new career in the field of law and thus, got himself admitted in Campus Law Centre, Delhi University in July, 2019 and upon completion, he enrolled himself as an Advocate in the year 2022. During that period of pursuing LLB, he had no source of income and was solely dependent on his parents. He thus, claimed maintenance in the sum of Rs. 88,000/- per month in HMA No. 843/2022 and litigation expenses in the sum of Rs. 3,00,000/- in HMA No. 1496/2018.

9. **The respondent/wife** has refuted the claim of maintenance/litigation expense in her reply/response and claimed that the Applications under Section 24 of the Hindu Marriage Act, 1955 are counter-blast of the petition under Section 12 of Protection of Women from Domestic Violence Act, 2005 (PWDV) and the criminal case against the appellant and his family members.

10. The respondent submits that apart from getting a salary of Rs. 2,00,000/- per month while working as IT Architect with M/s. Fidelity Information Services (FIS), he was having the income of Rs. 1,00,000/- per month from the shares and bonds purchased from the market.

11. It is denied that the appellant lost his job as his physical and mental health got affected on account of the respondent's illicit relationship with Dr. Vijaydeep Siddharth.

12. It is submitted that the appellant and the respondent separated on



02.07.2016 and the appellant was employed till July, 2017 which is one year after the appellant and this itself contradicts the claim of mental harassment by the respondent. Further, the appellant cleared the entrance examination for getting admission in Campus Law Centre, Delhi University to pursue LLB, which also defies that the appellant was not mentally harassed as he succeeded to crack the entrance examination.

13. The respondent/wife has thus, denied all the averments made in the Applications under Section 24 of the Hindu Marriage Act, 1955.

14. The appellant/husband in his Rejoinder to the Reply filed by the respondent/wife has reaffirmed all the facts as made in the Applications under Section 24 of the Hindu Marriage Act, 1955.

15. The two applications were dismissed by the learned Principal Judge, *vide* Order dated 19.04.2023.

16. **Submissions heard.**

17. Section 24 of the Hindu Marriage Act, 1955 is gender neutral and permits either of the spouse, who is unable to maintain himself/herelf, to claim maintenance from either spouse during the matrimonial litigation. However, while ascertaining the entitlement of maintenance, it is pertinent to consider the respective earnings and the earning capacity of both the spouses.

18. It is not disputed by the appellant/husband that he has done Bachelor of Engineering in Production and Industrial Engineering from the Delhi College of Engineering in the year 1999. He was working with different Companies till July, 2017, when he lost his job. He started his own business but did not succeed. He thereafter, pursued LLB degree from Campus Law Centre, Delhi University, and in the year 2022, he enrolled himself as an



Advocate, though he has not been able to set up a practice and earn as an Advocate.

19. On the other hand, it is not disputed that the respondent is an MBBS, DNB Health, including Hospital Administration and is employed with All India Institute of Medical Sciences, New Delhi (AIIMS) as an Assistant Professor (Contractual). The appellant/husband has claimed the respondent/wife's monthly salary is more than Rs. 2,00,000/- out of which, the in-hand salary is Rs. 1,33,673 + Rs. 25,000/- (approximately from other income) and the total in hand salary is 1,58,673/- per month.

20. During the course of arguments, it was not denied or disputed by the appellant that during his employment till July, 2017, he was getting a salary of Rs. 2,00,000/-. He also has admitted that he has invested in Shares and Debentures which is approximately Rs. 20,00,000/-.

21. The appellant/husband submits that the said investments were made at the time when he was in employment and was getting a salary of Rs. 2,00,000/- per month. A frivolous contention was made that the money for purchase of shares and debentures was invested by the appellant's father who admittedly had retired in the year 2005, who was a Doctor, and is a pensioner. It is very difficult to accept this contention of the appellant/husband that money in the shares was invested by his father. Even otherwise, it is not denied that he has a share standing of Rs. 20,00,000/- which would be getting some returns for the appellant.

22. Moreover, the appellant/husband, who has just completed his LLB and enrolled himself as an Advocate, may not be able to earn enough from his practice immediately, but this is a case where the appellant/husband is a well-qualified person, who has done Bachelor of Engineering in Production



and Industrial Engineering and while in employment till July, 2017, he was getting a salary of more than Rs. 2,00,000/- per month. His claim that he has no financial support or is unable to maintain or sustain himself cannot be accepted as he must definitely be having some savings from his previous earnings. Not only this, it cannot be visualised that he would be sitting completely idle, he definitely would have some corpus or some resource from where he is not only funding his litigation and also meeting his day-to-day expenses.

23. The appellant/husband, apart from being a highly educated person, is also a law graduate who has all the capacity to work and earn to support himself. The learned Principal Judge, Family Court has rightly observed that the appellant has “*experience, intellect and professional capability*” to earn for himself.

24. The contention of the appellant/husband that on account of his arrest in the criminal case and matrimonial litigation, he came under depression and is unable to work is also not tenable for the simple reason that he has been appearing in the Court regularly and has been pursuing/defending himself in person in the present case and as well as in other litigations, which believes his contention that he is unable to concentrate on work as he is under depression.

25. The respondent/wife may be qualified and earning reasonably well, but the appellant/husband is also highly qualified and was earning well from his job till July, 2017. No doubt, Section 24 of the Hindu Marriage Act, 1955 entitles either spouse to claim maintenance but only on justified grounds. In view of the aforesaid discussion, the appellant/husband has not been able to justify any ground to claim maintenance/litigation expenses



from the respondent/wife.

26. We hereby conclude that the appellant/husband is an able-bodied and highly qualified young man, who is capable of not only sustaining himself but also to shine and succeed in his profession with some efforts. The claim of maintenance in the sum of Rs. 88,000/- per month or one-time expense of Rs. 4-5 lakhs as maintenance from the respondent/wife and also Rs. 3,00,000/- towards the litigation costs, has been rightly denied by the learned Principal Judge, Family Court for the aforesaid cogent and well-defined reasons.

27. Accordingly, we find no merit in the present Appeals and the same are hereby dismissed along with pending applications.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 07, 2023
S.Sharma