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

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Decided on: 13<sup>th</sup> April, 2022

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**MAT.APP.(F.C.) 112/2020**

ANJU KUMARI

.....Appellant

Represented by: Mr. Shekhar Aggarwal & Mr. Rahul Mohod, Advocates.

versus

PUNEET KUMAR

..... Respondent

Represented by: Mr. Gaurav Gaur & Mr. Rohit Sehgal, Advocates with father of respondent.

**CORAM:****HON'BLE MS. JUSTICE MUKTA GUPTA****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****NEENA BANSAL KRISHNA, J. (ORAL)****CM APPL. 24526/2020 (Delay of 6 days in filing appeal)**

1. By this application, the appellant seeks condonation of 6 days' delay in filing the appeal.
2. For the reasons stated in the application, delay of 6 days in filing the appeal is condoned.
3. Application is disposed of.

**MAT.APP.(F.C.) 112/2020**

1. The present appeal has been filed by Anju Kumari (*hereinafter referred to as 'appellant'*) under Section 19 of the Family Court Act, 1984 (*hereinafter 'the Act, 1984'*) against the order dated 09<sup>th</sup> December, 2019 passed by the learned Principal Judge, Family Court, East, Karkardooma Court, whereby the learned Principal Judge denied the maintenance under



Section 24 of the Hindu Marriage Act, (*hereinafter referred to as the 'Act, 1955'*).

2. The appellant got married to Puneet Kumar (*hereinafter referred to as 'respondent'*) according to Hindu rites and customs and one son, namely, Master Diyan was born from the said wedlock on 10<sup>th</sup> February, 2017. Differences arose and the parties have been living separately since 04<sup>th</sup> April, 2017. The respondent filed the petition for divorce under Section 13 (1) (ia) of the Act, 1955, which is pending trial. During the proceedings, an application under Sections 24 and 26 of the Act, 1955, seeking *pendente lite* maintenance at the rate of sum of ₹90,000/- per month, was filed by the appellant for herself and the minor son.

3. The learned Principal Judge, Family Court observed that as per the affidavit of the appellant, she had educational qualifications of Master in Social Work and she was working as DCPU in State Child Protection Society from 24<sup>th</sup> October, 2017 to 23<sup>rd</sup> October, 2018 and thereafter, she took leave for taking care of the child. She is owner of flat bearing No.304, Tower-B, Lotus Panche, Section 110, Noida, Uttar Pradesh and has income from FDRs, she also owned one car, namely, Polo, Volkswagen.

4. Considering the financial capacity and the resources of the appellant, her qualifications, her earnings of about of ₹33,000/- per month while working in State Child Protection Society and that she has the potential to maintain herself from her independent sources of income, the appellant was denied any interim maintenance. In regard to the child, it was observed that she was already getting ₹5,000/- per month for the minor under Section 125 of Cr. P.C., which was adopted herein and the application was accordingly disposed of.



5. Aggrieved by the said order, the appellant preferred the present appeal.

6. The main grounds of challenge are that she has already resigned from the post of DCPU in State Child Protection Society to be able to take care of her son, who was barely 10 months old at that time. She had purchased Polo, Volkswagen car after selling her Honda City car. Furthermore, the learned Principal Judge has overlooked earnings and the assets of the respondent and also misinterpreted the decision of the Division Bench of this Court in the case of Sujit Kumar vs. Vandana, MAT. APP.(F.C.) 35/2015 dated 08<sup>th</sup> August, 2016, wherein it was observed that the status of parties, their assets, their liabilities and such other aspects must be considered while awarding the maintenance. Moreover, this Court in the case of Kusum Sharma vs. Mohinder Sharma had observed that maintenance is a basic human right and the survival rests on maintenance. The object of this provision is two-fold, namely, to prevent vagrancy and destitution and secondly, to ensure that indigent litigating spouse is not handicapped in defending or prosecuting the case due to want of money. Moreover, in the case of Shailja & Anr. vs. Khobbanna 2018 12 SCC 199, the distinction was drawn between the capacity of earning and actual earning, which were held to be different concepts, merely because of a wife is capable of earning is not sufficient reason to deny her the maintenance. Likewise, the Hon'ble Supreme Court in the decision reported as 2019 SCC OnLine SC 1263, Swapan Kumar Banerjee vs. The State of West Bengal and Ors. observed that onus is on the husband to adduce evidence to show that the wife has sufficient means to support herself. It is claimed that the learned Principal Judge, Family Court has overlooked the financial capacity of the respondent,



which is much more than that of the appellant and had wrongly denied the maintenance to the appellant.

7. No formal reply was filed on behalf of the respondent-husband.

8. Submissions heard.

9. It is an admitted case of the parties that they got married on 29<sup>th</sup> May, 2014 and one son, namely, Master Diyan was born on 10<sup>th</sup> February, 2017. The parties have been living separately since 04<sup>th</sup> April, 2017. The short controversy to be determined is whether the appellant is entitled to any maintenance.

10. The respondent is a Branch Manager, Scale-II in Allahabad Bank, Parliament Street, New Delhi since 08<sup>th</sup> August, 2011 and as stated in his affidavit dated 30<sup>th</sup> November, 2017, is drawing a salary of ₹56,141/- per month and after deductions, he gets a net salary of ₹45,000/- per month. He owns property bearing No. 329-A, Milan Vihar, Phase-II, Abhay Khand-III, Indrapuram, Ghaziabad, Uttar Pradesh, which is presently in possession of the appellant where she is residing. It is further explained that the appellant owns two properties in Delhi and Noida, namely, house bearing No. A-107/2, Gali No. 8, Near Balmiki Mandir, Jagatpuri, Delhi and Flat No. 304, Tower-8, Lotus Panche, Sector-110, Noida, Uttar Pradesh.

11. The appellant on the other hand, has explained that there is no property that she owns in Balmiki Mandir. She admits about the flat in Nodia but explains that it was purchased by her father in her name but the flat is lying locked and there is no rental income from the house. The respondent had claimed that the appellant owns two cars, namely, Honda City and Polo, Volkswagen car but it has been explained by the appellant that she had purchased the Polo, Volkswagen car after selling her Honda



City car. It is further explained that the flat in Indrapuram was purchased by the father of the appellant in 2015 but the documents were prepared in joint name of appellant and the respondent on the pretext that the respondent would be able to secure the loan of ₹40 lakhs from his bank, though respondent failed to do so and ultimately, the entire sale amount was arranged by the father of the appellant. The appellant has admitted that she had got the appointment as the District Child Protection Officer in State Child Protection Society, Delhi on contract for one year on monthly salary of ₹33,250/- per month. The appellant has placed on record her resignation letter dated 07<sup>th</sup> August, 2018, whereby she tendered her resignation on account of tender age of her son.

12. It is abundantly evident that the appellant, who is a well-qualified lady and holds the degree of Master in Social Work, and has properties as well as is maintaining a car. She had also taken up a job for one year but had left it because the son was about 10 months old; now the son is about 5 years old. It is no doubt true that the capacity to earn is not equivalent to the actual earnings but it is not only the qualifications of the appellant which are relevant in the present case but also her assets by way of her properties, which reflect that she has sufficient means to meet her day-to-day expenditure.

13. The impugned order to the extent of denying the *pendente lite* maintenance to the appellant cannot be faulted. The appellant, however, has also sought maintenance for her minor son, who is now about five years old. It is the responsibility of both the parents to give an upbringing to the child as per their standard and status. Considering that the respondent is a Branch Manager, Scale-II in Allahabad Bank and also his assets and background,



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maintenance of son Master Diyan is enhanced to ₹15,000/- per month, (inclusive of ₹5,000/- per month that he is already getting under Section 125 Cr. P.C.) from the 01<sup>st</sup> April, 2022 till the disposal of the divorce petition.

**(NEENA BANSAL KRISHNA)  
JUDGE**

**(MUKTA GUPTA)  
JUDGE**

**APRIL 13, 2022**  
**S.Sharma**

न्यायमेव जयते