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

% *Decided on:12th April,2022*

+ **MAT.APP. (F.C.) 3/2022**

CM APPL. 2090/2022 (For stay of proceedings)

DEEPIKA SETHI .....Appellant

Represented by: Mr. Vishal Bhatnagar, Ms. Richa Narang, Ms. Lata Walia, Mr. Ishu & Mr. Gaura Malik, Advocates with appellant in person.

versus

ROHIT SETH ...... Respondent

Represented by: Mr. Advocate (appearance not supplied)

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

NEENA BANSAL KRISHNA, J. (ORAL)

1. Ms. Deepika Sethi, the appellant, aggrieved by the order dated 21st October, 2021 of the Additional Principal Judge, Family Court denying her the maintenance, has filed the present appeal under Section 19 of the Family Courts Act, 1984(*hereinafter referred to as the "Act,1984")*.

2. The marriage between the appellant and the respondent was solemnised on 6th March, 2011 at DDA Ground, Sector 16, Rohini, Delhi, according to Hindu customs and rites and one daughter Sarisha was born on 23rd July, 2013.Differences arose between the parties and they eventually started living separately since 8th July, 2019. Custody of the daughter is with

the appellant-mother since then.

3. The appellant filed an application under Section 24 Hindu Marriage Act (HMA) in petition for divorce bearing HMA no.605 of 2020 on 15th September, 2020, under 13(1)(i-A) of HMA of 1955, claiming maintenance of ₹1,50,000 p.m. for herself and the daughter.

4. The learned Additional Principal Judge noted that the appellant as per her own Income affidavit, is B.Tech in Civil Engineering and is getting a gross salary of ₹1,39,200 per month though she claimed her monthly expenditure to be ₹1,44,300. The respondent in his affidavit of income disclosed his monthly income as ₹1,22,790 per month and expenditure of around ₹76,500. Observing that the salary of the appellant was commensurate to that of the respondent, the learned Additional Principal Judge denied the maintenance to the appellant. However, considering the monthly expenditure of the child which was claimed by the appellant to be around ₹51,000 and having regard to the income of the respondent, monthly maintenance of ₹15,000 from the date of filing of the petition till further orders/ during the pendency of the petitioner, was granted.

5. The appellant aggrieved by the order of maintenance, filed the present appeal wherein the main grounds of challenge are that the affidavit of income of the respondent clearly reflects that he was the Director of M/S.Sysacme Private Limited and sole proprietor of M/S Innate Infotech. He does not have any dependents or responsibility of any member and all the money earned by him, is spent on himself. He has failed to annex any documents to explain his expenses. The savings of the respondent in PPF account, his investment in shares and stocks worth ₹31,57,772; his share in agricultural land worth ₹30,00,000 and shares of his own Company worth

₹ 90,000 have also not been considered. Moreover, the respondent in his income affidavit has shown that he has purchased a commercial property for his office worth ₹45,48,361 and he also has ICICI prudential worth ₹16,00,000. The moveable assets have been disclosed as ₹10,91,698. The respondent has international clients and earns in foreign currency. It is claimed that the learned Family Judge has failed to make correct assessment of the income of the respondent.

6. On the other hand, the net income of the appellant is ₹1,12,081 per month out of which she spends about ₹40,000 to ₹50,000 per month on her daughter. She does not have means for extra classes or extra-curricular activities of the daughter.

7. Reliance has been placed on the decision of High Court of Delhi in Crl. Rev. Pet. 549/2018 titled ***Urvashi aggarwal and ors. Vs. Inderpaul Aggarwal*** wherein it was held that the husband is bound to compensate his wife who, after spending on the children, may hardly be left with anything to maintain herself. The father has an equal duty to provide for the children and the mother alone cannot be burdened with the expenses for raising and educating the children.

8. It is thus submitted that the impugned order of maintenance is liable to be set aside and interim maintenance be granted to the appellant as claimed by her.

9. Submissions heard.

10. The appellant had claimed interim maintenance at the sum of ₹1,50,000 for herself and her daughter. The appellant had disclosed her gross monthly income as ₹1,39,200 per month and has asserted that after deductions she gets around ₹1,12,081 per month.

11. The respondent on the other hand, as per his Income Affidavit is the Director of M/S.Sysacme Private Limited and a sole proprietor of M/S Innate Infotech. He himself had claimed his monthly income to be ₹1,22,790 but had asserted his expenses to be ₹76,533**.** However, in the income affidavit filed by the respondent in the learned Family Court he has claimed his salary as a Director of Sysacme Pvt. Ltd. as ₹3,00,000. He has further claimed that he obtains an interest from bank deposit and FDRs as ₹54,534(FY-2020-21), interest on investments including deposits NSC, IVP, KVP, Post office schemes, PPF, loans etc. as ₹2,01,461 (FY-2020-21), dividends as ₹11,308(FY-2020-21). Therefore, there is an apparent conflict between his stated monthly income and other remunerations received by him. The learned Additional Principal Judge Family Court has looked only at the disclosed income of the respondent but has failed to appreciate that he is also the sole proprietor of a Firm. His other assets and savings in PPF account, his investment in shares and stocks worth ₹31,57,772; his share in agricultural land worth ₹30,00,000 and shares of his own Company worth ₹90,000 have not been considered. Moreover, he has purchased a commercial property for his office worth ₹45,48,361. He also has ICICI prudential shares worth ₹16,00,000. The jewellery assets have been disclosed as ₹10,91,698. It is quite evident that he is a man of means and his income is not limited to ₹1,22,790 per month as considered by the Ld. Judge, Family Court.

12. The object of providing pendent lite maintenance under Section24 of the Act is to enable a spouse not only to sustain herself but also to be able to meet the litigation expenses and be able to defend herself effectively. The Appellant being working and getting a salary of ₹1,12,081, her being held

not entitled to interim maintenance in a petition under Section 24 of the Act, cannot be faulted.

13. However, it is significant to note that the upbringing of the child is the joint responsibility of both the parents and the differences between the parents cannot be a circumstance to deprive the child of the meaningful development to which she is entitled considering the financial status of both the parents. Admittedly, the child is studying in Mother's pride High School, Rohini, (earlier known as Presidium School) and the monthly expenditure of the child is about ₹20,000 to ₹30,000 per month aside from her expenditure on travel, tuitions, sports, vacations and entertainment. The expenditure of the child is detailed to be around ₹6,14,400 approximately per annum.

14. Considering the status of the respondent as reflected from his monthly income and his assets, the interim maintenance of the child is enhanced to ₹35,000 per month from the date of filing of the application for maintenance**.** The arrears shall be cleared in six equal monthly instalments to be paid along with the regular monthly maintenance. The impugned order is accordingly modified.

15. Order be uploaded on the website of this Court.

(NEENA BANSAL KRISHNA)
JUDGE

(MUKTA GUPTA)
JUDGE

APRIL 12, 2022/pa