



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

% **Reserved on: 21st August, 2023**
Pronounced on: 12th September, 2023

+ **MAT.APP.(F.C.) 248/2019 & CM APPL.20720/2022**

NIHARIKA GHOSH @ NIHARIKA KUNDU

..... Appellant

Through: Mr. Om Prakash Gulabani,
Advocate with appellant in person.

versus

SHANKAR GHOSH

..... Respondent

Through: Respondent in person.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J

1. The appellant/ wife has challenged the Order dated 03.09.2019 of learned Principal Judge, Family Courts, dismissing her application for maintenance under Section 24 of Hindu Marriage Act, 1955.
2. The appellant/ wife had got married to the respondent/ husband on 21.04.2014, but on account of incompatibility and differences, they were not able to continue in their matrimonial relationship leading to filing of a Divorce Petition under Section 13 (1)(ia) by the respondent/husband. The



appellant was working till then, but after the filing of the Divorce Petition she resigned from her job on 22.05.2015. The matter was amicably settled and the Divorce Petition was withdrawn on 06.02.2016. However, a police complaint was filed by the appellant on 06.05.2016 thereby reflecting that the parties were unable to settle in their matrimonial relationship.

3. The Respondent filed the second Divorce Petition under Section 13 (1)(ia) of HMA, 1955 against the appellant on 24.05.2016. During the trial the appellant filed an application under Section 24 of HMA which was dismissed vide order dated 08.08.2018. Aggrieved an appeal was preferred before this Court and the matter was remanded back for re-adjudication vide Order dated 28.03.2019.

4. The learned Principal Judge, Family Court considered the matter afresh and observing qualifications of the appellant and also that she had been working even after the marriage, declined to grant her any *pendent lite* maintenance vide Order dated 03.09.2019. Aggrieved, the present appeal has been preferred by the appellant/ wife who has sought interim maintenance @ Rs.35,000/- per month in addition to litigation expenses of Rs.55,000/-.

5. **Submissions heard.**

6. It is not in dispute that the appellant was M. Phil at the time of her marriage and was pursuing Ph.D which she has completed and is now having the qualification of Ph.D (Management) with professional qualification in Computers. While on the other hand the respondent is a simple graduate. It is also not denied that appellant was working at the



time of her marriage at a Diamond Jewellery Showroom and was getting Rs.12,000/- per month. She had left her job since she was unable to attend her office since 22.05.2015.

7. From the submissions it is evident that not only is the appellant highly qualified but had been working even at the time of her marriage.

8. The second aspect of significance is that the respondent had claimed that the appellant is working in the office of M.P. Udit Raj in Connaught Place and her claim that she is unemployed, is incorrect. In support of his assertions he had relied upon a CD showing the appellant working in the office of Mr. Udit Raj and also marking her attendance in the Register. The appellant who had initially taken a stand that she was not working, when confronted with this CD, gave an explanation that she has a friend working in the office of Mr. Udit Raj and at times when she goes to visit her friend, she also looks after the office work.

9. The learned Principal Judge, Family Court has rightly observed that the appellant had initially failed to disclose that she was working even if not regularly or for charity as claimed by her. She had failed to disclose any of these facts and was compelled to do so after the filing of the application under Section 151 CPC and the CD. It was also observed by learned Principal Judge, Family Court that it is difficult to accept that a person who is so highly qualified would not be working and it is even more difficult to accept that she would be working for charity.

10. We on the facts as narrated above, agree with the conclusions of the learned Principal Judge, Family Courts that the appellant not only is a highly qualified lady, but has been working even at the time of her



marriage and thereafter. The documents and the admissions made by the appellant clearly lead to an irresistible conclusion that she is employed in the office of the M.P. It is no doubt that merely because a person is qualified she must be compelled to work, but here is a case where in addition to be qualified, the appellant has been working. There is no doubt a difference between “capacity” and “actual earning”, but here it is not a case where appellant had only the capacity but the document on record clearly point out that she has also been working.

11. Similar facts as in hand were considered in the case of Mamta Jaiswal vs. Rajesh Jaiswal 2000 (3) MPLJ 100 to observed that Section 24 has been enacted for the purpose of providing a monetary assistance to either spouse who is incapable of supporting himself or herself in spite of sincere efforts. However, the law does not expect persons engaged in the legal battles to remain idle solely with the objective of squeezing out money from the opposite party. Section 24 of HMA is not meant to create an Army of idle people waiting for a dole to be awarded by the other spouse. In the said case finding that the lady was very well qualified, declined to grant any maintenance.

12. Likewise, in the case of Rupali Gupta vs. Rajat Gupta 2016 (234) DLT 693, Division Bench of this Court deprecated the claim of maintenance under Section 24 of HMA by a well qualified spouse having an earning capacity.

13. We find that in the present case it is not only that the appellant is highly qualified and has an earning capacity, but in fact she has been earning, though has not been inclined to truthfully disclose her true



income. Such a person cannot be held entitled to maintenance. Pertinently, the claim for maintenance by the appellant under the provisions of Protection of Women against Domestic Violence Act has also met the same fate and the maintenance has been declined to her. We, therefore, find no merit in the Appeal which is hereby dismissed.

14. The pending application also stands disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

SEPTEMBER 12, 2023

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