2023:DHC:8543-DB

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of decision: 29th November, 2023*

(9) + MAT.APP.(F.C.) 41/2019, CM APPLs. 5907/2019, 5908/2019 & 45803/2019

RAJAT GOYAL ..... Appellant

Through: Mr. Abhishek Kumar and Mr. Jitender Garg, Advs.

versus

SHRUTI GOYAL ..... Respondent

Through: Mr. Gaurav Chitkara, Mr. Ankit Sethi & Mr. Mukesh Gupta, Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 5907/2019 (for delay)

This is an application filed by the appellant seeking condonation of 72 days delay in filing the present appeal.

For the reasons stated in the application, the delay of 72 days in filing the appeal is condoned. The application is disposed of.

MAT.APP.(F.C.) 41/2019, CM APPLs. 5908/2019 & 45803/2019

1. This appeal has been filed by the appellant challenging the order dated September 26, 2018, whereby the learned Principal Judge, Family Courts, West, Tis Hazari Courts, Delhi ('Family Court', hereinafter) has directed the appellant to pay the maintenance, pendent lite of ₹25,000/- per month to the respondent and minor daughter including her educational expenses from the date of the application till the disposal of the case, which shall be payable on or before 7th day of

each calendar month by depositing the amount in the account of the respondent. That apart, the Family Court has also directed the appellant to pay ₹20,000/- as litigation expenses to the respondent.

2. The submission of Mr. Abhishek Kumar, learned counsel appearing for the appellant is primarily that the Family Court having assessed the income of the appellant as ₹50,000/-, could not have awarded ₹25,000/- i.e., half of the income as maintenance to the respondent and the minor girl including her educational expenses.

3. We are unable to accept the plea of the learned counsel for the appellant for the simple reason that the said conclusion is based on the following finding:

> *"Regarding the income, the petitioner stated that he is doing the business of plastic scrap with earning of Rs.18,731/- per month. The petitioner also filed ITR wherein the income of the petitioner is shown within the range of Rs.2,75,000/- to Rs.3,25,000/-. It has become common practice by the self employed person to conceal their actual and real income and the income tax returns' submitted by them hardly reflects that their actual and real income. The income as claimed by the petitioner is not matching with the expenditure as shown by the petitioner in the income affidavit. The petitioner in income affidavit stated that he is paying Rs.8,000/- as rent in respect of the rented accommodation where at present the petitioner is residing besides payment of Rs.6,920/- per month towards the payment of installments of home loan of Rs.7,07,321/- which he has taken for the purchase of a flat at Bhiwadi. The counsel for the petitioner argued that the said installments towards the repayment of loan is paid by the father of the petitioner. The said plea of the petitioner does not inspire any confidence particularly the said fact is not mentioned in the income affidavit. The monthly expenditure of the petitioner as reflected in the income*

affidavit is more than the income of the petitioner. The petitioner has concealed his actual monthly income by taking the shelter of ITRs placed on record. The income of the petitioner has to be calculated on the basis of reasonable estimation by taking into account the material available on record. The petitioner is doing the business of plastic scrap. The petitioner is also having the luxury car as reflected from the photographs as placed on record. The petitioner is also traveling to various places. The plea of the petitioner that he is staying in a rented accommodation also does not inspire any confidence in the absence of any concrete documents. The petitioner is also incurred expenditure of Rs.2,00,000/- on litigation with monthly income of Rs.18,731/-. After considering all facts, the monthly income of the petitioner is assessed at Rs.50,000/-. The petitioner is accordingly directed to pay Rs.25,000/- per month as maintenance pendente lite to the respondent and the minor daughter including the educational expenses in respect of the minor daughter Vanya Goya from the date of the application till the disposal of the case which shall be payable on or before 7th day of each English Calander Month by directly depositing in the account of the respondent. The petitioner is also directed to pay Rs.20,000/- as litigation expenses to the respondent. The maintenance, if any and litigation expenses already paid by the petitioner shall be adjusted accordingly. The arrears of maintenance shall be paid with six equal monthly installments commencing from October, 2018.

Put up on 20.12.2018 for PE.

Petitioner to file list of witnesses along with affidavit in evidence till next date of hearing with advance copy to the respondent at least 15 days prior from next date of hearing."

4. In other words, the Family Court's view was that the monthly expenditure of the appellant as reflected in the income affidavit is more than the income of the appellant and he has concealed his actual

monthly income by taking the shelter under ITRs which were placed on record. According to the Family Court, the income has to be calculated on the basis of reasonable estimation by taking into account (in the case in hand) the materials' available before it i.e., he doing the business of plastic scrap, possesses a luxury car and travels to various places; and the plea of the appellant that he is staying in a rented accommodation does not inspire any confidence in the absence of documents; he has incurred an expenditure of ₹2,00,000/- on litigation. Based on the above findings, the Family Court has granted the amount of ₹25,000/-.

5. In view of the above findings of fact and given the nature of finding, we are of the view that the grant of the amount of ₹25,000/- as maintenance, is justified. The amount granted is not only for the respondent but also for his minor daughter including her educational expenses, which shall reasonably include fee, uniform, books, transportation, tuition and any extracurricular activities, which the child would like to undertake.

6. In the facts of this case, no interference is called for with the impugned order being *pendente lite* in nature. We have been informed that the application under Section 24 of the Hindu Marriage Act, 1955 is still pending before the Family Court. The appeal along with the pending applications are dismissed.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

NOVEMBER 29, 2023/*aky*