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

% ***Date of decision: 27th September, 2023***

+ **MAT.APP.(F.C.) 43/2022**

PREETI SHARMA Appellant
Through: Mr. Bhavneet Singh, Advocate with
appellant in person.

Versus

GAUTAM KHER Respondent
Through: None.

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 **Appeal under Section 19 of the Family Courts Act, 1984** has been filed on behalf of the appellant against the impugned Judgment dated 03.02.2022 passed by the learned Principal Judge, Family Courts, *vide* which, Rs.7000/- per month was awarded towards maintenance of the minor child of the parties from the date of filing of the petition under Section 20 of the Hindu Adoptions and Maintenance Act, 1956 (*hereinafter referred to as "HAMA"*) till 31.12.2021 and Rs.10,000/- per month from 01.01.2022 till he is legally entitled to receive the maintenance.
2. **The facts in brief** are that the appellant-wife got married to the respondent-husband on 09.12.2010 at Haridwar and one son was born from



the wedlock on 04.02.2012. The appellant had claimed that despite being a father, the respondent neglected to take care of the child. The relationship between the parties were not cordial as the respondent in collusion and in connivance with his parents indulged in acts of cruelty, harassment, assault and intimidation and abandoned the appellant and the child who has grown up under the guardianship of the mother. The child was subjected to acts of cruelty by the respondent while they were residing together. In the year 2012, the appellant filed a complaint before CAW Cell but the same was compromised and the parties started residing together. However, the brutality and the cruelty of the respondent towards the appellant and their child continued. In midnight of 17.04.2015, the respondent had thrown out the appellant and the child out of the house and neither the appellant nor the child was allowed to enter the house. Since then, the appellant along with the child has been residing at the parental home at House No. 31, Block No.1, DDA Flats, Kalkaji, New Delhi. The respondent-father in the meanwhile locked the house and shifted to some unidentified place and was not traceable till the notice of divorce petition was received by her.

3. The appellant had deposed that she was a Teacher in the Government School whereas the respondent as per his own admission has been working in NCR Corporation Pvt. Ltd., Gurgaon and earning Rs.70,000/- per month. In addition to his salary, he has certain properties in his name including a flat in Gaur City, Noida and a house in Haridwar from where he was getting handsome rent. In his details of expenditure, no expenditure is reflected to have been incurred on the child. It was asserted that the child was admitted in Amity International School and was in KG Standard at the time of filing of the petition. His expenditure in the school was around Rs.15,000/- per



month while his other incidental expenses towards clothes, meals, food, toys, medicines etc. were around Rs.15,000/- per month. The average monthly expenditure on the child was taken to be Rs.30,000/- per month. It was claimed that despite the respondent's primary responsibility to maintain the child being father, especially when he is earning sufficiently and is financially sound, he has failed to do so. The appellant-wife was finding it difficult to single handedly meet the expenses of the child. It was asserted that the respondent being the natural father and financially sound to look after the child, it was his legal as well as moral responsibility to take care and maintain the child. She thus, claimed in her petition under Section 20 of the HAMA, that the respondent is liable to pay Rs.30,000/- per month and also liable to invest Rs.25,000/- per month to secure the future of the child as well as future education of the child until he becomes independent.

4. **The respondent-husband contested the petition** who asserted that the appellant-wife is well placed in her career and has been working as TGT Teacher in Government School, Deoli, Delhi and getting a salary of Rs.1 lakh per month along with the various perquisites. She had been working for 13 years and had made various FDRs, LIC policies and PPF etc. for more than Rs.10 lakhs. The respondent had asserted that because of the conduct of the appellant, he was broken mentally and economically and consequently he is on the verge of losing his job and unable to concentrate on his work.

5. The respondent asserted that they have been living separately since 29.05.2015 and till then, he had been bearing all the household expenses. It was claimed that he has been subjected to humiliation, harassment, abuse and has been threatened to be falsely implicated in dowry and Domestic Violence cases.



6. The appellant-wife had got admitted the child in AMIOWN School which is very expensive and despite the fact that the respondent was finding it difficult to bear the expenses of the child, she did not pay any heed and got the child admitted in the school. Again, without discussing or taking the consent of the respondent-husband, the appellant-wife shifted the child to Amity School, which is again very costly. He also asserted that the appellant got the child admitted in Amity School only to enable herself to claim a maintenance amount to the tune of Rs. 55,000/- per month, from the respondent who was earning only Rs.52,000/- per month. The respondent claimed that he had been sending Rs. 2000/- through speed post to the appellant for the expenses of the child, however, the appellant refused to receive the money.

7. **On the pleadings of the parties, the following issues** were framed on 17.01.2019:

“1. Whether the petitioner is entitled to the amount of maintenance claimed? OPP.

2. Relief.”

8. The respondent thereafter absented himself and was proceeded *ex parte vide* order dated 15.12.2021. The appellant examined herself as PW-1 and has tendered her evidence by way of affidavit Ex.PW-1/A. She relied upon various documents which are Ex.PW-1/1 to PW-1/11.

9. The learned Principal Judge, Family Court observed that it is the responsibility of both the parents to take care of the child. The appellant as per her own admission is working as a Teacher in Government School and is earning. It was held that only the child was entitled to maintenance and after considering the respective salaries of the parties, respondent was directed to



pay an amount of Rs.7000/- per month from the date of filing of the petition till 31.12.2021 and thereafter, Rs.10,000/- per month from 01.01.2022 till the child was legally entitled to receive the same. The relevant paragraph reads as under:-

“Therefore keeping in view the status of parties, their respective needs, capacity of the respondent/husband to pay, his own expenses, his liability and also keeping in view all the relevant facts and circumstance, respondent is directed to pay maintenance to the son of the parties @ Rs. 7,000/- per month from the date of filing of petition till 31.12.2021 and Rs. 10,000/- per month from 01.01.2022 till he is legally entitled to receive the same. It is further made clear that there shall be an increase of 5 % after every two years in this order of maintenance from now onwards. The respondent/husband is directed to clear the arrears of maintenance within 3 months from today in equal installments and to pay the monthly maintenance after the date of orders by way of money order or by deposit in the bank account of the son of parties on furnishing the account number of the same by or before 10th date of each calendar month. It is further made clear that as per settled Law, the son of parties shall be entitled to receive the maintenance to the highest amount the various allowances, if any, awarded to him by various courts. There shall be no order as to costs.

Decree Sheet be prepared accordingly”.

10. Aggrieved, the present Appeal has been preferred by the appellant.
11. **Submissions heard of the counsel for the appellant. None appeared on behalf of the respondent.**
12. Indisputably, the appellant and the respondent are living separately since 2015 and the child who was about 3 years old at that time and since then has been in exclusive custody of the mother. The appellant is admittedly working as a TGT Teacher in the Government School and getting



a salary of more than Rs.1 lakh per month. On the other hand, it is not disputed that the respondent is working in a private Company and is getting a salary of Rs.70,000/- per month. The learned Principal Judge, Family Courts has thus, rightly concluded that looking at the respective salaries of the parties, the appellant is not only gainfully employed but has a better salary than the respondent and thus, was not entitled to any monthly maintenance.

13. Now, coming to the maintenance which may be awarded to the son. As has been observed by the learned Principal Judge, Family Courts, upbringing and the welfare of the child is the joint responsibility and obligation of both the parties. The appellant is in exclusive custody of the child and has been taking care of all his day to day needs. She had deposed that the monthly expenditure of the child was about Rs. 55,000/-. However, it can also not be overlooked that while the appellant has a job security being employed in the Government School, the respondent is working in a private Company at a lesser salary with no surety of tenure. Looking at the disparity in the respective income of the appellant and the respondent, we find that the maintenance has been rightly granted by the learned Principal Judge, Family Courts. Moreover, due care has been taken of the increasing expenditure of the child in years to come and learned Principal Judge, Family Courts has directed 5% increase of monthly maintenance after every two years from the date of Order i.e. 03.02.2022.

14. Accordingly, we hereby dismiss the Appeal as the impugned Order does not call for any interference.



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15. The pending applications, if any, also stand disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 27, 2023
jn/akb

Signature Not Verified

Digitally Signed By: AHIL
SHARMA

Signing Date: 18.10.2023
17:29:44

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