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

% ***Reserved on: August 01, 2023***
Pronounced on: September 14, 2023

\+ MAT.APP.(F.C.) 5/2022 & CM APPL. 3037/2022

A.S. ..... Appellant
Through: Ms. Anita Sahani, Mr. Tanuj Gulati & Mr. Shivam Garg, Advocates with appellant in person

Versus

D.S. ..... Respondent
Through: Ms. Pratiti Rungta & Mr. Sudhir Sinha, Advocates with respondent in person

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. The parties to the present petition got married as per Hindu rites on 21.11.1997 and out of this wedlock, two sons presently aged about 23 years and 17 years were born.

2. The present appeal under Section 19 of the Family Court Act, 1984 read with Section 151 CPC has been preferred by appellant-husband assailing the order dated 25.10.2021 passed by the learned Family Court whereby appellant-husband has been directed to pay maintenance of

Rs.50,000/- to respondent-wife and children, from the date of filing of the application till final disposal of the petition. In addition, appellant-husband has also been directed to pay rent, electricity, water and grocery bills as well as educational expenses of both the children.

3. The appellant-husband in the present appeal has averred that the conjugal relationship was over in June, 2008 and since the year 2011, the parties are not even on talking terms. The appellant-husband has averred that in April, 2014, he filed a case No.55/2014 under Section 13(1), (1a) and (1b) of the Hindu Marriage Act, 1955, seeking dissolution of marriage by a decree of divorce on the ground of cruelty and desertion before the learned Family Court. As an off shoot, the respondent-wife moved an application under Section 26 of the Protection of Women from Domestic Violence Act, 2005 claiming destitution and direction to the appellant to pay rent, water and electricity charges. Vide order dated 24.11.2014, a short-gap arrangement was made and appellant-husband without going into the merits accepted the same till disposal of the application under Section 26 of the Hindu Marriage Act on merits. The appellant-husband has claimed that thereafter, another application under Section 24 of the Hindu Marriage Act was filed by the respondent-wife. The respondent-wife in her application under Section 24 of the Hindu Marriage Act sought maintenance of Rs.1,62,500/- per month exclusive of rent, electricity and water charges from appellant-husband. Both the parties were directed to file their income affidavits before the learned Family Court. However, despite appellant's application and directions by the Family Court, the respondent-wife did not file the income tax affidavit in terms of guidelines mentioned in ***Kusum***

Sharma Vs. Mahender Kumar Sharma, thereby respondent-wife concealed material information and documents from the Court.

4. The appellant-husband filed an application under Section 340 Cr.P.C against respondent for committing perjury and the learned Family Court vide order dated 19.02.2020 directed respondent-wife to file her reply, however, the same has not been filed till date. The appellant-husband also filed an application under Section 12 Rule 6 read with Section 151 CPC praying for dissolution of marriage and rejection of application under Section 24 of the Hindu Marriage Act filed by respondent-wife, on the ground of hiding material facts and obtaining order dated 24.11.2014, where-under appellant had consented to pay interim maintenance Rs.77,000/- prior to filing of affidavits of income by the parties.

5. Learned Principal Judge vide order dated 25.10.2021 held that the appellant's total income was Rs.2,31,000/- per month and directed him to pay a sum of Rs.50,000/- per month to respondent-wife and children. Besides, appellant has also been directed to pay rent, water, electricity, grocery bills and educational expenses. Thereby, according to appellant, he has been directed to pay approximately Rs.1,30,000/- per month towards maintenance of respondent-wife and his children.

6. The challenge to the aforesaid order dated 25.10.2021 by appellant-husband is on the ground that the impugned order is arbitrary and unjust, as learned Principal Judge has contrived his income as Rs.2,31,000/- per month in the year 2018 which was prior to paying of tax. The appellant is paying monthly rental of Rs.49,500/- per month for the tenanted residential accommodation, which is a 3 BHK Apartment, wherein respondent-wife and

his children are staying, whereas the appellant alongwith his 86 years old mother is staying in one room rented accommodation at the rental of Rs.18,000/- per month. The appellant is paying electricity bill for an average amount of Rs.1,200/- per month for himself, however, the electricity bill in respect of accommodation of respondent-wife is Rs.12,000/- to Rs.18,000 per month. The appellant has pleaded that the respondent-wife is owning a residential house in Greater Noida, yet she is staying in rented accommodation to burden the appellant to bear rental expenses. Appellant has also pleaded that he has also been paying Rs.500/- per month towards water charges and approximately Rs.13,309/- per month towards school fee of younger son (elder son already school passed out).

7. The appellant has averred that he has been paying the following expenses of the respondents as short-gap arrangement:-

1.	Rent of Respondent's Flat	Rs.49,500
2.	Electricity Charges of Respondent's Flat	Rs.14,000
3.	Water Charges (Approx.)	Rs.500
4.	School fee of younger child	Rs.13,309
	Total (Approx.)	Rs.77,309

8. Learned counsel appearing on behalf of the appellant next submitted that the average income of appellant, as per last six income tax assessment years, is Rs.22,556/- per month, whereas learned trial court has erred in taking his income as Rs.2,31,000/- per month. The appellant has pleaded that appellant is getting rental income of Rs.2,31,000/- per month from a property situated in New Friends Colony, which is before taxes and deductions and out of which, the appellant has to bear self and his mother's

expenses also.

9. Learned counsel for the appellant submitted that the appellant was in property business and he had purchased 7 properties; 5 plots in Bindapur, one plot in Dwarka, one plot in Shivaji Enclave in the name of respondent-wife, which have been disposed of by respondent-wife, who has usurped the sale proceeds without knowledge of appellant. It was submitted that respondent-wife has purchased three new properties, of which she admits having one residential house bearing no. 168, Block Techoma Estate, Sector Pill 03, Greater Noida, District Gautam Budh Nagar, UP and second, residential plot no 132, Block A, Pocket 2, Sector 17, Dwarka in her name. It was submitted that in order to harass the appellant, respondent is not staying in the Greater Noida property and is also not letting to him rent it out since the year 2010. Also the respondent has purchased a brand new Ciaz car amounting to Rs.9.10 Lacs in her name, whereas paucity of funds forced the appellant to buy second hand 2010 model motor cycle in the year 2015.

10. It was next submitted that the respondent-wife is travelling to Thailand, South Africa, Mandava, Orissa, Agra etc. and making huge expenditures on her tours and travelling. Attention of this Court was drawn to receipts of respondent's tours to Thailand, Agra, and Mandava, which indicate as under:-

S. No.	Date	Place of visit	No. of Days
1.	Around 30.09.2014	South Africa	Around 10 days
2.	18.06.2016-28.06.2016	Thailand-Delhi, Bangkok, Krabi, Phuket, Bangkok, Delhi	9-10 days

3.	30.12.2015-01.01.2016	Mandava (stay at Sara Villa Resort)	2
4.	20.06.2015-23.06.2015	Agra (stay at Hotel Trident)	3
5.	08.06.2014-10.06.2014	Bhuvaneshwar, Orissa	2

11. Further attention is also drawn to expenses of respondent's trip to Orissa, which are as under:-

S. No.	Date	Place of visit	Amount spent
1.	31.05.2014	Yatra.com	6268.30
2.	31.05.2014	Yatra.com	12651.06
3.	08.06.2014	Hotel Hans Pvt. Ltd., Puri	4000.00
4.	08.06.2014	Hotel Trident, Bhuvaneshwar	16909.18
5.	10.06.2014	Hotel Hans Pvt. Ltd., Puri	9388.00
6.	**Total**		**49,216.54**

12. The appellant has averred that respondent-wife is also having full year gymnasium subscription by paying approximately Rs.30,000/- and thereby, she is living a lavish life.

13. Learned counsel for the appellant submitted that in the income tax affidavits dated 26.10.2018 and 22.01.2019 filed by the respondent-wife, she has claimed that she is a house wife whereas the respondent-wife has been working throughout when their son was suffering from Dyslexia and now she is taking an excuse before this Court that she is not working and has deliberately concealed the fact that their son has been performing well in his studies. The appellant has thus submitted that the respondent was:-

a. proprietor of the firm "Empire

International";
b. was working as Director of company "M/s. Keshav Techinfo Private Limited" having Directors Identification Number 02304153 since 09.09.2008;
c. has been working for M/s. Adikar Fashions and getting salary therefrom as is also evident from the bank statement filed by the respondent, but which suddenly and magically ceased to appear in the bank statements and Income Tax Returns upon Appellant filing divorce proceedings in 2014;
d. property business with amounts admittedly "invested" for profits by respondent No.2 admitted residential properties – a residential house bearing No.168, Block Techoma estate, Sector-PHI-03, Greater Noida, District Gautam Budh Nagar, U.P., bought in 2010 and a residential plot no.132, Block-A, Pkt-2, Sec-17, Dwarka, Delhi, bought in 2012. Respondent is holding both investments since a decade and which have much appreciated;
e. Rs.12 Lacs invested vide cheque no.691663 dated 03.02.2011 and returns which have been concealed by the respondent.

14. Besides, respondent-wife is said to be holding a DEMAT Account No.FH7LO in Kotak Mahindra Bank and as on 31.03.2017, she was having shares amounting to Rs.3,78,913/-. Learned counsel pointed out that after their separation in year 2007, respondent has been living a luxurious life and enjoying investment and returns out of the money spent by the appellant, whereas the appellant is living hand to mouth and has been forced to pay a hefty amount over and above the amount which he had accepted as a short-gap arrangement.

15. Learned counsel submitted that appellant-husband has been paying a sum of Rs.77,000/- to respondent-wife which he had accepted as a short-gap arrangement during the pendency of the petition before HMA Court, however, respondent-wife has deliberately been delaying the proceedings in the said case.

16. The appellant has averred that the elder son of the parties has completed his graduation and is running his private company in the name and style of M/s. Mystream Futuretech Pvt. Ltd.

17. Learned counsel for the appellant submitted that the proceedings under Section 26 of the D.V. Act have been prolonging and there seems no end to the agony of appellant who is paying a hefty amount for the maintenance of his wife and children. It was submitted that the learned Principal Judge has failed to consider that the appellant has filed Income Tax Return for the year 2009-10 till the year 2018-19 though the respondent has filed Income Tax Return for the years 2009 till 2014-15, in the divorce proceedings which were filed by the appellant in year 2014. Also, the learned Principal Judge has failed to consider that respondent-wife is flushed with funds from the appellants in the form of assets, investments, return on investments, including the property and business in the name of appellant.

18. To the contrary, learned counsel for respondent-wife submitted that the impugned order dated 25.10.2021 passed by learned Principal Judge is well merited and calls for no interference from this court. It was submitted that appellant has sufficient source of income and investments and he has good means to maintain his wife and children. It was also submitted that the

appellant had income from different assets and the learned Principal Judge on the basis of total income available in the hands of appellant had fixed the amount of interim maintenance while deciding the application under Section 24 of Hindu Marriage Act, 1955.

19. Learned counsel fairly acceded that respondent-wife has 50% share holding in the immovable properties owned by the appellant-husband, however, submitted that the appellant-husband is liable to maintain the wife, who is not working and children who are dependent upon him. It was submitted that the learned Principal Judge has rightly equated between the income and liabilities of the appellant-husband while granting interim maintenance amount of Rs.50,000/- per month in addition to payment of rent of the house, electricity, water and grocery bills of the respondent-wife and his children and so, the order passed by learned Principal Judge calls for no interference.

20. The submissions advanced by learned counsel representing both the sides were heard at length and on perusal of material placed before this Court we find that in the petition filed under the provisions of Section 13(1) (ia) and 13 (i) (ib) by the appellant-husband, vide impugned order dated 25.10.2021, the learned Principal Judge has disposed of the application under Section 24 of the Hindu Marriage Act preferred by the respondent-wife and appellant-husband has been directed to pay interim maintenance of Rs.50,000/- per month to the respondent-wife for herself and two minor sons **of the parties, who are in her custody and to pay rent, education, electricity, water, grocery and other expenses of the respondents.**

21. The learned Family Court has relied upon decision of Hon'ble

Supreme Court dated 04.11.2020 in Crl. Appeal No. 730/2020 , titled as ***Rajneesh Vs.*** **Neha** as well as a decision of this Court in ***Bharat Hegde Vs. Saroj Hegde*** 140 (2007) DLT 16 to apply the settled factors in awarding the interim maintenance in the present case and directed as under:-

> "*Thus, keeping in view the status of parties, their respective needs, capacity of the non applicant/husband to pay, his own expenses, his liabilities and also keeping in view the facts and circumstances of the case, the application under Section 24 of HMA filed by the respondent/wife is disposed of thereby directing the petitioner/husband to pay to the respondent, for maintenance of respondent/wife and children, a sum of Rs.50,000 per month from the date of filing of the application till final disposal of the petitioner in addition to the rent of the house of the respondent and the electricity, water and grocery bills which as per the petitioner he is paying along with the educational expenses of both the children. Recently, the Hon'ble High Court of Delhi in CRL. REV. P. 549/2018 titled as Urvashi Aggarwal & Ors. Vs. Inderpaul Aggarwal, decided on 05.10.2021 has held that "even a child of 18 years does not start earning and therefore is entitled for maintenance". The petitioner/husband is directed to clear the arrears of maintenance within 3 months from today in equal instalments 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 respondent/wife on furnishing the account number of the same by or before 10th date of each calendar month. The default shall be viewed in terms of the judgment of Hon'ble Delhi High Court in the case of Gaurav Sondhi Vs. Divya Sondhi 120 (2005) DLT 426. It is further made*

clear that as per settled Law, the respondent shall be entitled to receive the maintenance to the highest amount the various allowances, if any, awarded to her by various courts."

22. Relevantly, the provisions of Section 24 of the Hindu Marriage Act, 1955 provides for maintenance *pendente lite* to either husband or wife, provided he/she has no source of income. The Hon'ble Supreme Court in ***Manish Jain Vs. Akanksha Jain* (2017) 15 SCC 801** has held as under:-

> ***"12.** The Court exercises a wide discretion in the matter of granting alimony pendente lite but the discretion is judicial and neither arbitrary nor capricious. It is to be guided on sound principles of matrimonial law and to be exercised within the ambit of the provisions of the Act and having regard to the object of the Act. The Court would not be in a position to judge the merits of the rival contentions of the parties when deciding an application for interim alimony and would not allow its discretion to be fettered by the nature of the allegations made by them and would not examine the merits of the case. Section 24 of the HM Act lays down that in arriving at the quantum of interim maintenance to be paid by one spouse to another, the Court must have regard to the appellant's own income and the income of the respondent.*
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> *XXXXX*
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> ***15.** Section 24 of the HM Act empowers the court in any proceeding under the Act, if it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the*

> *application of any one of them order the other party to pay to the petitioner the expenses of the proceeding and monthly maintenance as may seem to be reasonable during the proceeding, having regard to also the income of both the applicant and the respondent. Heading of Section 24 of the Act is "Maintenance pendente lite and expenses of proceedings". The section, however, does not use the word "maintenance"; but the word "support" can be interpreted to mean as Section 24 is intended to provide for maintenance pendente lite.*
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> ***16.** An order for maintenance pendente lite or for costs of the proceedings is conditional on the circumstance that the wife or husband who makes a claim for the same has no independent income sufficient for her or his support or to meet the necessary expenses of the proceeding. It is no answer to a claim of maintenance that the wife is educated and could support herself. Likewise, the financial position of the wife's parents is also immaterial. The court must take into consideration the status of the parties and the capacity of the spouse to pay maintenance and whether the applicant has any independent income sufficient for her or his support. Maintenance is always dependent upon factual situation; the court should, therefore, mould the claim for maintenance determining the quantum based on various factors brought before the court."*

23. Having regard to the settled position of law that while deciding the quantum of interim maintenance, the Courts are required to go into the financial status, income and expenditures of both the parties, the learned trial court in the impugned order has noted that the appellant-husband in his

income affidavit dated 17.11.2018 has declared that he is B.Sc (General); having rental income of Rs.2,31,000/- per month; living with his 86 years old mother and contributing Rs.20,000/- to his mother's expenses; staying in a tenanted accommodation of one BHK and his monthly expenses include Rs.15,000/- as rent for his accommodation; groceries for mother Rs.800; Rs.300 for water charges; Rs.18,00/- for electricity, Rs.450/- for gas, Rs.1,500/- towards cable/set top box, Rs.200 household items; Rs.1700 helper, Rs.500 fuel, Rs.300 doctor's fee; Rs.900 club charges, Rs.49,000 as rent for respondents' accommodation, which totals to Rs.3,04,794 per month.

24. Appellant has stated in his affidavit that he is Managing Director with 50% share in his business, pendency of litigation and outstanding liability to the tune of Rs.56,58,885.49 [subject matter of W.P.(Civil) 29809/2013] with interest liability of Rs.1,69,000/- per day and has no investment in NSC, KVP, IVP, post office scheme, and PPF etc. He has Rs.2,07,495/- in Kotak Mahendera Bank, 50 shares of Rs.1000/- value each, has given loan of Rs.35,24,172 to M/S Delhi Chemical & Pharmaceutical Works Pvt. Ltd., ancestral jewellery worth Rs.18,00,000/-, received 1/3rd share of Rs.30,66,667 from sale of agricultural land. The appellant has also stated that he has personal loan liability of Rs.16,21,385/-; outstanding amount worth Rs.46.81 crores against UPSIDC, outstanding fees of Advocates of Rs.18,13,000/- and Rs.2,57,700/- towards pending litigations.

25. With regard to financial status of respondent-wife, the appellant-husband in his affidavit has stated that respondent-wife is owner of House No. 168, Tcchoma Estate, Sector PHJ,Q3, Greater Noida and Flat No. 137,

Block-F, Vkaspuri, Delhi and has rental income from these properties. She has share of investment in Plot No. 132, Block A, Pocket 2, Sector 17, Dwarka, Delhi and in ancestral properties in WZ 49, Chukhandi, Tilak Nagar, Delhi and property No. J-34, Ganga Ram Vatika, Tilak Nagar, Delhi. She is earning income to the tune of Rs.38,27,364/- from investments made in her export firm M/S Empire International; shares worth value of Rs.3,17,472/-; income from high value cheque of Rs.42,00,000/-, bank balance of Rs.24,186.22 in Kotak Mahendera Bank, one Max Life Insurance, jewellery worth Rs.18,00,000/- lacs and maintaining one Honda City Car and one Maruthi Ciaz car.

26. On the other hand, the respondent-wife, in her income affidavit has stated that she is BA (Hons) and a housewife; has 30% share in vacant plot measuring 350 sq. yards in Greater Noida worth Rs.10,86,015; 12.5% share in 125 sq. meters plot in Dwarka worth Rs.9,93,125/-, she is paying Rs.2,10,00 per annum premium for Max Insurance Policy and *istridhan* jewellery worth Rs.30-35 lacs. She admitted having toured to Malaysia and Singapore with her children in the year 2007; also went to South Africa on her father's expense and Thailand on her brother's expense.

27. She has stated to have obtained loan of Rs.15,00,000/- from her brother. She has monthly expense of Rs.50,601/- per month for maintenance of her children; Rs.8,000 per month towards her personal care; Rs.8,000/- towards expenses of domestic servant; Rs.60,000 per annum towards holidays and vacations; Rs.2,500 gifts and Rs.7,50,000/- towards litigation expenses. Besides, respondent-wife has also claimed expenses of phone, gas, TV, internet expenses to the tune of approximately Rs.3,000/-.

28. With regard to income of appellant-husband, she has stated in her affidavit that he has residential property of 1150 sq. yards at Friends Colony, Delhi and one commercial land measuring 19000 sq yards in Sahibabad, UP.

29. Keeping in view the aforesaid affidavits filed on behalf of both the sides, the learned trial court has observed that at the stage of deciding application under Section 24 of the Act, the court is only required to see the status, capacity and liabilities of both the parties. The learned trial court has also noted that the appellant-husband has been bearing expenses for rent, education, electricity, water, grocery and other expenses for the respondents i.e. his wife and children as well as taking care of his mother. The learned trial court has also noted that though respondent-wife is educated but she is not working and earning and even though she has properties in her name; some income from shares and dividends and jewellery in her possession, but this cannot bring regular income in her hands. The Family Court has further noted that appellant-husband has regular rental income of Rs.2,31,525/- per month besides income of Rs.1.50 lacs from his printing business. In such facts, the trial court has directed the appellant-husband to pay interim maintenance of Rs.50,000/- per month to the respondents in addition to payment of rent, electricity, water, grocery and educational expenses of children.

30. In the considered opinion of this Court, the learned Family Court is in no error to observe that at the time of deciding application under Section 24 of the act, only a *prima facie* view of income and liabilities of the parties have to be taken. In the present case, as claimed the respondent-wife is not

working and has no source of regular income. Though the learned trial court has taken note of the fact that the ownership of two properties does not bring any income to the pocket of respondent-wife, however, this Court does not appreciate as to why respondent-wife is not staying in the property bearing no. 168, Block Techoma Estate, Sector Pill 03, Greater Noida, District Gautam Budh Nagar, UP and has not even put it on rent to fetch rental income out of it, as has been alleged by the appellant-husband. Similarly, it does not appeal to this Court that despite having residential property in New Friends Colony, why appellant-husband has chosen to stay in a one room apartment on rental basis. It is a matter of record that both the parties have different properties in their names and also have source of income accruing in the form of interest, shares and dividends to their credit.

31. With regard to payment of interim maintenance to the spouse, the Hon'ble Supreme Court in ***Rajnesh Vs. Neha*** (2021) 2 SCC 324, has observed as under:-

> *"63. At present, the issue of interim maintenance is decided on the basis of pleadings, where some amount of guesswork or rough estimation takes place, so as to make a prima facie assessment of the amount to be awarded. It is often seen that both parties submit scanty material, do not disclose the correct details, and suppress vital information, which makes it difficult for the Family Courts to make an objective assessment for grant of interim maintenance. While there is a tendency on the part of the wife to exaggerate her needs, there is a corresponding tendency by the husband to conceal his actual income."*

32. It has already been held in a catena of decisions that the maintenance

awarded must be realistic and reasonable, to avoid any extremes, which becomes oppressive and unbearable for the husband to pay it. There is no straight jacket formula to calculate the amount of interim maintenance to be granted by the Court. However, the determinative factors such like income of the spouses, wealth and properties in their names, standard of living etc. are the factors to be borne in mind while also taking care of the liabilities over their shoulders.

33. In the present case, while quantifying the amount of interim maintenance, the learned Family Court failed to consider that besides matrimonial litigation, the appellant-husband has also been facing arbitral proceedings and has other pending litigations in respect of his work, which is a bounden liability to be met with. While arriving at the conclusion that respondent-wife has no source of fixed income, the learned Family Court ignored the aspect that appellant-husband has also been facing financial crunch and has liabilities to his credit. There is no dispute to the legal position that the spouse is liable to maintain the other spouse and children, however, equity shall be maintained only if one is directed to pay interim maintenance to his/her capacity.

34. There is categoric admission by the respondent-wife of spending lavishly on her travel and tours and leading a luxurious life and she has also claimed Rs.60,000/- per annum towards tours and travels, which shall be at the expense of appellant-husband. The elder son of the parties is stated to have already completed his graduation and according to appellant, he is running his firm in the name and style of M/s. Mystream Futuretech Pvt. Ltd, which has not been disputed by the respondent-wife. The younger son of the parties is said to be still studying and appellant-husband is bearing his

educational expenses. The respondent-wife is living in a rented accommodation but has a residential house bearing no. 168, Block Techoma Estate, Sector Pill 03, Greater Noida, District Gautam Budh Nagar, UP, where she can either live or can she can fetch rental income therefrom to meet her expenses; and second, residential plot no 132, Block A, Pocket 2, Sector 17, Dwarka in her name.

35. The trial court has taken income of the appellant, as has been stated in his affidavit at Rs.2,31,000/- per month and noted that he is earning Rs.1.5lacs from his printing job work. The trial court has failed to note the assertion of appellant-husband that the printing business was closed in the year 2016 and he had surrendered his VAT registration form on 04.05.2016. The trial court has failed to consider that the respondent-wife in written statement filed in HMA proceedings, in Para-11 has stated that the printing press was closed long ago; in Para-24 stated that the pharmaceutical company was also closed down; in Para-27 stated that appellant was unemployed and in Para-29 stated that new business of distributorship of Hallmark Cards in the year 1998 also closed within an year. The respondent-wife in her written statement has gone to the extent of stating that appellant-husband, like his elder brother was suffering from mental disorder (Para-34) and was unemployed and not doing any work (Para-41).

36. In the facts of the present case, this Court finds that at best, the income of the appellant which could have been taken by the trial court is Rs.2,31,000/- (before payment of tax etc.) and has been in error to hold that appellant is additionally earning Rs.1.5 lacs from his printing business. Besides maintaining his wife and children, the appellant has to bear his own expenses and meet his liabilities and also has also to take care of his old

aged ailing mother, who is fully dependent upon him.

37. In the light of above, we find that it would be in the interest of justice to direct the appellant-husband to pay fixed interim maintenance of Rs.50,000/- per month to his wife and younger child (son). In addition, appellant is also directed to pay educational fee of the younger child/son of the parties, which shall be directly remitted to the Institute/College where he is studying.

38. Accordingly, the impugned order dated 25.10.2021 passed by the learned Family Court is hereby partly modified to the extent noted above.

39. With directions as aforesaid, the present appeal is accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 14, 2023
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