



\$~16

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

% ***Date of decision: 19th September, 2023***

+ **MAT.APP. (FC.) 192/2022**

ACHAL YADAV

..... Appellant

Through: Mr. Gaurav Deshraj, Advocate with
appellant through video conferencing.

versus

PREETI YADAV

..... Respondent

Through: Ms. Juhi Arora, Advocate (DHCLSC)
& Mr. Saral Arora, Advocate with
respondent through video
conferencing.

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. An appeal under Section 19 of the Family courts Act, 1984 has been filed by the appellant/ husband against the Order dated 21.09.2022 granting interim maintenance in the sum of Rs.8000/- per month (*Rs.4,000/- to the respondent/ wife for herself and Rs.4,000/- for the minor child*) in an application under Section 24 of Hindu Marriage Act, 1955.

2. The facts, in brief, are that the parties got married on 18.01.2014 and were blessed with one daughter on 17.05.2015. On account of the matrimonial discord, the parties separated in March, 2019 and since then the



child has been in the exclusive custody of the respondent/ wife. She filed an application under Section 24 of the HMA seeking maintenance, in the divorce petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

3. It was claimed by her that appellant/ husband is working in DRDO and also has agricultural and rental income which adds up to Rs.1 lakh per month. On the other hand, she has been residing in parental home since March, 2019 and she and her daughter are surviving on the mercy of her parents since the appellant has not made any provision for their expenses. The respondent had thus, claimed Rs.70,000/- per month as maintenance for herself and the daughter.

4. The **appellant/ husband had contested** this application and claimed that there is concealment of facts as the respondent/ wife is working as a teacher but has failed to disclose this fact. He claimed that he had borrowed Rs.1.5 to 2 lakhs to make the respondent do her JBT course, despite which she left the matrimonial home. He filed his affidavit of Income stating his income to be Rs.15,000/- to Rs.20,000/- per month being a contractual employee with DRDO. He further stated that he has been voluntarily paying Rs.3,000/- per month since 17.09.2021. The appellant further stated that their child is a special child for which he has got done the Health Insurance coverage. He also asserted that the respondent's father has a rental income of about Rs.1 lakh. FIR under Section 498-A/406 IPC has been registered against him in addition to a petition under Domestic Violence Act.

5. The learned Judge, Family Court considering the respective income of both the parties held that the appellant was getting a salary of about Rs.15,000/- to Rs.20,000/- per month. He, therefore, granted interim maintenance in the sum of Rs.4,000/- per month to the respondent/wife and



Rs.4,000/- per month to the daughter.

6. Aggrieved by the said Order, the husband/ appellant has filed the present appeal.

7. It is asserted by the appellant that the learned Metropolitan Magistrate in the proceedings under Domestic Violence Act, had declined to grant any interim maintenance to the respondent on two grounds namely suppression of material facts and not disclosure of her having the qualification of JBT and CTET and also because it was not shown prima facie that Domestic Violence had been committed upon her. However, Rs.5,000/- were granted as maintenance to the minor child. An appeal was preferred by the respondent before the learned Sessions Court but the same was dismissed vide Order dated 19.11.2022.

8. The appellant had further submitted that on account of unscrupulous complaints made in his office by the respondent and also because he had to take multiple leave on account of the various litigations, he lost his job on 31.03.2022. Despite this fact and also that maintenance has been declined to the respondent, the same has been granted to the respondent vide impugned Order which is liable to be set aside. It was further submitted that in terms of Kusum Sharma judgment and her educational and professional qualifications of JBT/ CTET, no person should remain unemployed and not earn. In fact, she is gainfully employed but has misrepresented her true working status. This is supported by the factum that she has not submitted her current bank statements before the learned Judge, Family Court. Moreover, during the visitations the child has disclosed to the appellant that the respondent is employed in “Sant Nirankari Public School, Paschim Vihar” as a teacher. She has indicated her status as non-employed. For



these reasons the impugned Order is liable to be set aside.

9. Submissions heard.

10. The appellant had submitted his salary slip and considering the same his monthly income has been assessed by the learned Judge, Family Court as about Rs.15,000/- to Rs.20,000/- per month.

11. The next question arises in respect of the respondent. During the arguments, it was not denied that she is a qualified JBT and has the qualifications of CTET, but had asserted that she was unable to get any job. It was also submitted that because of the daughter being a special child, she needs to take care and is unable to pursue any job. Pertinently, under the Domestic Violence Act petition, the interim maintenance has been declined to the respondent on the ground that she had failed to disclose her true educational qualifications and also to prove her allegations of Domestic Violence. She was declined any interim maintenance, though Rs.5,000/- were granted for the maintenance of the minor child. This Order had been upheld by the learned Addl. Sessions Judge in appeal.

12. It cannot be over looked that respondent is professionally qualified, educated lady. So being the case, her assertions that she has not been able to work, cannot be accepted especially when there are specific averments that she has taken up a job in Sant Nirankari Public School, Paschim Vihar. The respondent, therefore, is not entitled to any maintenance.

13. However, it cannot be over looked that the minor child is a special child and Rs.4,000/- awarded to her, cannot be held sufficient to cater to her special needs. In these circumstances, the interim maintenance is awarded to the child in the sum of Rs.8,000/- per month. We, accordingly modify the impugned Order and grant Rs.8,000/- per month as interim maintenance for



2023-DHC-9033-DB



the daughter. The Appeal is disposed of in the aforesaid terms.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 16, 2023

va

Signature Not Verified

Digitally Signed By: RAHIL
SHARMA

Signing Date: 26.09.2023
16:47:19

MAT.APP. (F.C.) 192/2022

Page 5 of 5