



2024:DHC:5266-DB



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Judgement reserved on : 02.05.2024*

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*Judgement pronounced on : 18.07.2024*+ **MAT.APP.(F.C.) 171/2018**

RENU SHARMA &amp; ANR

..... Appellants

Through: Mr Akash Godhvani and Mr Ashwath  
Bhatia, Advocates.

versus

MOOL CHAND SHARMA

..... Respondent

Through: Mr Vikas Tomar and Mr Nimish Mishra,  
Advocates.+ **MAT.APP.(F.C.) 306/2018 & CMAPPL. 49429/2018**

RENU SHARMA

..... Appellant

Through: Mr Akash Godhvani and Mr Ashwath  
Bhatia, Advocates.

versus

MC SHARMA &amp; ANR

..... Respondents

Through: Mr Vikas Tomar and Mr Nimish Mishra,  
Advocates.**CORAM:****HON'BLE MR JUSTICE RAJIV SHAKDHER****HON'BLE MR JUSTICE AMIT BANSAL****RAJIV SHAKDHER, J.:**

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**Background:**

1. We are called upon to adjudicate two appeals. MAT.APP.(F.C.) 171/2018 [hereafter referred to as “1<sup>st</sup> appeal”] has been preferred to assail the order dated 22.03.2018, passed on an application filed under Sections 24 and 26 of the Hindu Marriage Act, 1955 [hereafter referred to as the “1955 Act”]. This appeal has been lodged by one, Ms Renu Sharma and her daughter, Ms Gaurika Sharma against Mr MC Sharma. Ms Gaurika Sharma is the daughter of Ms Renu Sharma and Mr MC Sharma.

2. The other appeal i.e., MAT.APPL.(F.C.) 306/2018 [hereafter referred to as, “2<sup>nd</sup> appeal”] has been preferred to lay a challenge to the judgment dated 06.08.2018, passed in a divorce petition filed by Mr MC Sharma against Ms Renu Sharma. Mr MC Sharma had sought divorce on the following three (03) grounds:

- (i) Firstly, after solemnization of marriage, Renu Sharma had voluntary sexual intercourse with, one, Mr Santosh Kumar.
- (ii) Secondly, after solemnization of marriage, he had been treated with cruelty by Renu Sharma.
- (iii) Thirdly, Renu Sharma had deserted him for a continuous period of two (02) years, immediately preceding the divorce action.

2.1 Accordingly, MC Sharma invoked the provisions of section 13(1)(i), section 13(1)(ia) and section 13(1)(ib) of the 1955 Act.

3. Since two appeals are up for adjudication, hereafter we will be referring to the parties by their names, *albeit* in abbreviated form. Accordingly, Ms Renu Sharma will be referred to as “RS”. Likewise, Ms Gaurika Sharma i.e., the daughter will be referred to as “GS” and Mr MC



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Sharma will be referred to as “MCS”. Mr Santosh Kumar will be referred to as “SK”.

3.1 The abbreviated reference will be made unless the context requires the aforementioned persons to be referred to otherwise.

4. The Family Court, *qua* the maintenance application, directed MCS to pay Rs.5000/- per month for the upkeep of the daughter i.e., GS. The liability cast on the father i.e., MCS was triggered from the date when the application was instituted, till the final disposal of the divorce petition. Furthermore, MCS was directed to liquidate the arrears of maintenance within three (03) months from the date of the order, *albeit* in equal installments. As far as current maintenance payments were concerned, they had to be remitted to GS by the 10th day of each English calendar month. The mode of payment, as stipulated by the impugned order, was by way of money order or by remitting the money to the designated bank account of RS.

4.1 The maintenance, at the rate of Rs.5000/- per month, was fixed by the Family Court, having regard to the fact that MCS was bearing the household expenses (except expenses incurred for groceries) and educational expenses of GS. Undoubtedly, the other factor which weighed with the Family Court while awarding maintenance only to the daughter i.e., GS, *albeit* at the rate of Rs. 5000/- per month was that the daughter and RS were staying at a house owned by MCS and the liability accrued towards electricity, water, house maintenance and gas charges was borne by MCS.

5. As far as the divorce petition was concerned, the Family Court allowed the same under sections 13(1)(i) and 13(1)(ia) of the 1955 Act on grounds of adultery and cruelty, respectively.



5.1 Insofar as the allegation of desertion is concerned, the Family Court ruled that MCS has failed to prove the same.

**Prefatory Facts:**

6. With this brief preface, we proceed to adjudicate the above-captioned appeals. But before we do so, we must set forth the backdrop against which the instant appeals have been preferred.

7. RS and MCS, who belong to different castes, entered into matrimony on 30.10.1990. From wedlock, the couple had a male child named Akshay Sharma [hereafter referred to as “AS”], who was born on 23.07.1992. The son, i.e., AS is today, approximately 32 years of age.

7.1 After the birth of AS, *albeit* nearly eleven (11) years later, the couple had another child i.e., a girl child named GS.

8. The record discloses that the son has been in the company of his father i.e., MCS, since the couple separated, while the daughter GS, from that point in time, is being looked after by the mother i.e., RS.

9. As per the Family Court, the couple separated in 2012, which is also reflected in MCS’s affidavit dated 24.01.2018, contrary to his earlier stand that the separation took place in 2009. Apparently, there has been no cohabitation between RS and MCS from the time they separated.

**I.MAT.APP.(FC) 171/2018**

10. In the application for interim maintenance, a direction was sought that MCS should be called upon to pay Rs. 3,00,000/- per month, along with litigation expenses of Rs. 80,000/-. It is not in dispute that at the time when the application was moved, MCS was already paying towards maintenance Rs. 20,000/-, the detailed breakup of which is as follows:



| S. No. | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Recipient | Amount                |
|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|-----------------------|
| (i)    | Compensation pursuant to the order dated 02.02.2015, passed by the concerned court in the proceedings taken out by RS under the Protection of Women from Domestic Violence Act, 2005 [hereafter referred to as, "DV Act"].<br><br>[The concerned court had directed MCS to pay the said amount as RS had shifted out to a property owned by him, which had a smaller area as compared to the one in which she was residing at that particular time. Both properties were owned by MCS.] | RS        | Rs.5000/- per month   |
| (ii)   | Amount paid towards maintenance charges (demanded by the residents' society), gas, water and electricity charges.                                                                                                                                                                                                                                                                                                                                                                       | RS        | Rs.3000/- per month   |
| (iii)  | Amount paid towards educational expenses of the daughter which, <i>inter alia</i> , includes fees, textbooks, stationery and transportation.                                                                                                                                                                                                                                                                                                                                            | GS        | Rs.12,000/- per month |

11. The claim for enhancement of interim maintenance by RS is based on the assertion that MCS earns approximately Rs.10 lakhs per month. In support of this plea, RS has contended that MCS stands appointed to the board of directors of nine (09) companies; is the owner of several immovable properties, some of which were purchased while the proceedings were pending before the Family Court; has liquid assets and investments worth Rs. 78,12,793/-, which includes loan amounting to Rs.29,40,000



extended by MCS to his father; owns shares of an entity named SRN Gartex Pvt. Ltd. [hereafter referred to as “SRN Gartex”] worth Rs. 11,43,320/-, and possesses gold coins worth Rs. 1,50,000/-.

11.1 It is asserted by RS that MCS earns monthly income of Rs. 81,365/-, of which Rs.30,000/- per month is received as salary from an entity named, ‘SplendorLandbase Ltd.’ situated at District Centre, Jasola, New Delhi [hereafter referred to as, “Splendor”].

12. MCS’s immovable properties to which RS and GS allude to are the following:

- (i) Residential plot no C - 200, Sector 108, Noida.
- (ii) Flat no. 101, Trilok Apartments, 85, I.P. Extension, Delhi-110092.
- (iii) Flat no. B- 1/102, Milan Apartments, 72, I.P. Extension Delhi-110092.
- (iv) Shop no. G-2, GS Arcade Local Shopping Centre, Mayur Vihar, Phase - II, Delhi.
- (v) Shop no. G -33, Star City Mall, Mayur Vihar Phase 1, Delhi.
- (vi) Shop no. PG-6, 23, C- 58/15 A, Sector 62, Noida.
- (vii) Shop no. 122, Industrial Area, Phase - 11, Noida.

12.1 We may note that out of the seven (07) properties referred to above, MCS has accepted that he presently owns and is in possession (constructive or otherwise) of the following three (03) immovable properties:

- (i) Flat no. 101, Trilok Apartments, 85, I.P. Extension, Delhi-110092.
- (ii) Flat no. B- 1/102, Milan Apartments, 72, I.P. Extension Delhi-110092.
- (iii) Shop no. 122, Industrial Area, Phase - II, Noida

12.2 Of the three properties referred to above, one immovable property i.e., Flat no. 101, Trilok Apartments, 85, I.P. Extension, Delhi-110092 [hereafter referred to as, “Trilok Apartments”] is in possession of RS and GS, where



they are currently residing.

13. As regards income, MCS makes the following assertions in the written synopsis dated 23.07.2022:

*“That the Respondent's earlier monthly sources of income as duly mentioned in the affidavit were Income from Salary Rs. 40,000/-, Rental monthly Income from OBC Rs.28,025/-, interest income from FDRs & saving bank a/c Rs.7,000/-, dividend Rs.740/- and PPF interest Rs.11,000/- aggregating to Rs.86,765/- p.m. Respondent's monthly income in hand, after deductions of EPF and TDS of Rs. 5,400/-, worked out to Rs.81,365/-. Out of said income the Respondent was incurring monthly expenditure of Rs. 10,000/- towards maintenance of Respondent, Rs.12,000/- on the education of daughter and Rs.47,250/- towards his own maintenance and medical treatment and Rs.11,000 was reinvested in PPF account, which are aggregating to Rs.79,250/- (@page 1,5,7,8 & 9 of Respondent's affidavit dt. 24.01.18). Respondent is not in employment since February 2022.”*

14. As far as qualifications are concerned, both parties are reasonably qualified. RS is a commerce graduate, while MCS is a post graduate in commerce and has acquired an LLB degree.

14.1 The record also reveals that RS worked with BSES (Enforcement) for sometime as a contractual employee. At the relevant point in time, RS was drawing a salary of Rs. 26,780/- per month, according to her affidavit dated 21.11.2017 filed with the Family Court.

15. As far as MCS is concerned, he claims, as noticed above, that he is not employed since February, 2022.

16. RS and MCS also claim that they are suffering from various ailments. RS avers that she suffers from blood pressure and suffers persistent pain in her right knee, for which she has been advised surgery.

16.1 On the other hand, the ailments that MCS has seem to be grave. MCS suffers from cancer which has affected his urinary bladder and has been infected with Hepatitis C Virus. Due to these life threatening diseases, MCS



claims he has been undergoing treatment for several years at Apollo Hospital and AIIMS. It is also claimed by MCS that he underwent a surgery, and immunotherapy to treat cancerous tumors which were found in his urinary bladder.

17. MCS has also asserted that the management of Splendor had appointed him as a director in several group companies, from which he resigned way back. It is the assertion of MCS that although Splendor accepted his resignation, the requisite form was not filed with the concerned statutory authority. It is also the submission of MCS that he was never involved in the day-to-day affairs of the nine (09) companies referred to by RS. The firm stand taken by MCS is that he has not received any sitting fee, commission or remuneration from the nine (09) companies referred to by RS.

17.1 Insofar as SRN Gartex is concerned, MCS states he was both a director and a shareholder of the said entity. However, MCS claims that he did not earn any income from SRN Gartex as during the relevant period, it did not carry on much business activity. The income earned/(loss incurred) by SRN Gartex between FY 2015-16 and 2020-21, according to MCS, was as follows:

| Financial Year | Profit/(Loss)    |
|----------------|------------------|
| 2015-16        | (Rs. 1,06,195/-) |
| 2016-17        | Rs. 62,325/-     |
| 2017-18        | (Rs. 9,429/-)    |



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|         |                  |
|---------|------------------|
| 2018-19 | (Rs. 1,38,834/-) |
| 2019-20 | (Rs. 2,48,612/-) |
| 2020-21 | (Rs. 2,24,690/-) |

18. Given the claim and counter claims made by the parties with regard to the income earned, what emerges is the following:

18.1 RS is working as an associate, on contract basis, in an entity named, Easy Source HR Solutions Private Limited, whereas MCS is without a job.

18.2 MCS is financially better off, having made some investments in immovable properties. MCS is certainly the owner of three (03) properties referred to in paragraph 12.1, above.

18.3 Of the three (03) immovable properties, the “Trilok Apartments” is in occupation of RS and GS.

18.4 The Trilok Apartments comprises three bedrooms, drawing and dining room, kitchen, two balconies, three toilets and has an area of approximately 1100 sq. ft.

18.5 As noticed above, MCS is paying for the maintenance of the Trilok Apartments property, which includes water and electricity charges, gas bills, and maintenance charges levied by the concerned residents’ society.

18.6 In addition thereto, the property tax concerning Trilok Apartments is also paid by MCS.

18.7 Even before the decision dated 22.03.2018 was rendered by the Family Court, MCS was paying, cumulatively, Rs.20,000/- per month to RS and GS under various heads, the details of which are given in paragraph 10, above.



18.8 MCS is presently suffering from serious diseases which would entail substantial expenses being incurred by him.

19. The assertion made by RS that MCS is earning Rs. 10 lakhs per month is not borne from the record, though his financial position, as noted above, appears to be better than that of RS.

20. Thus, having regard to the aforesaid, in the course of hearing, we had called upon the parties to consider arriving at an amicable settlement in the matter. As a matter of fact, both parties had agreed to arrive at a settlement, as recorded in the order dated 07.02.2024. For convenience, the relevant part of the said order is set forth hereafter:

*“ 2. We have asked the respondent/husband, who is present in Court, as to what terms he would like to offer to reach a settlement in the matter. Accordingly, the respondent/husband has indicated that he is willing to settle the dispute on the following terms:*

- (i) In so far as the daughter is concerned, who is about 20 years of age, maintenance at the rate of Rs. 10,000/- per month will be paid.*
- (ii) The appellant wife will be paid maintenance, during her lifetime, at the rate of Rs. 15,000/- per month.*
- (iii) A lump sum amount of Rs. 6,00,000/- will be paid to the appellant/wife.*
- (iv) A gift deed concerning the house in which the appellant/wife and the daughter reside which, admittedly, is owned by respondent/husband, will be executed in favour of the appellant/wife and the daughter.*
- (v) The daughter who is pursuing Chartered Accountancy (CA), her educational expenses and expenses which may have to be incurred for her marriage will be borne by the respondent/husband.*

*3. Mr Khosla says that he has instructions to convey to the Court that the appellant/wife is agreeable to the offer made with regard to all aspects except insofar as monthly rate of maintenance is offered qua the appellant/wife.*

*3.1 Mr Khosla states that maintenance should be increased to Rs 25,000/- per month.*

*4. This aspect will be examined on the next date of hearing in the presence of the appellant/wife.*

*4.1 We may also note that the offer made by the respondent/husband is founded on the understanding that neither any further litigation (civil or criminal) will be instituted nor any pecuniary demands will be made hereafter by the appellant/wife.*

*4.2 Besides the aforesaid, it is also the understanding of the respondent/husband*



*that appellant/wife will not resist dissolution of marriage. ”*

21. The Family Court, as indicated above, has denied maintenance to RS and directed payment of maintenance only to GS i.e., the daughter at the rate of Rs. 5000/- per month.

21.1 This direction was triggered from the date of filing of the application under Sections 24 and 26 of the 1955 Act till final disposal of the divorce petition. The arrears concerning maintenance were, thus, directed to be cleared within three (03) months while, monthly maintenance to the daughter i.e., GS was to be paid by 10<sup>th</sup> day of each “English calendar month”.

22. The reasons put forth in the impugned order dated 22.03.2018 by the Family Court for denying maintenance to RS are broadly captured in paragraph 8A of the said order. Concerning RS’s state of income and expenses, the Family Court has made the following observations:

(i) Although RS has contended that she is working as a contractual employee and is earning Rs. 8000 – Rs. 10,000 per month, the assertion seems unbelievable as minimum wages for an unskilled workman is more than Rs. 8000/- per month.

(ii) The nature of deposits and savings that RS has demonstrates that she does not require any maintenance for herself.

(iii) MCS is paying all household expenses except monies expended for groceries.

(iv) Since RS is housed in an accommodation provided by MCS, she is not required to expend any money on rentals.

22.1 Besides this, a general observation has been made which, perhaps,



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was uncalled for, that in the name of maintaining the same standard of living, petitions are filed in court to extort money from the opposite party.

23. In a nutshell, the view taken by the Family Court in denying maintenance to RS is pivoted on the fact that she has a job which enables her to earn a monthly income and that expenses concerning the house, except for groceries, are borne by MCS.

24. In our view, the Family Court has committed an error in outrightly denying maintenance to RS for the reason that although it has recorded the information furnished by RS in her affidavit, in paragraph 5 of the impugned order dated 22.03.2018, it has not dealt with the same.

24.1 The information given therein i.e., in paragraph 5 is based on the affidavit dated 21.11.2017 furnished by RS before the Family Court. As per the said affidavit, the total income of RS from various sources is Rs. 26,780/- per month, and not Rs.8,000/- to Rs.10,000/- per month, as erroneously noted by the Family Court. The observation made by the Family Court in its reasoning was based on an earlier affidavit filed by RS, dated 06.06.2013.

24.2 Thus, although the income earned per month by RS is higher than the amount noted by the Family Court, what was lost sight of was the sum she was required to expend per month for her upkeep. RS, in her affidavit dated 21.11.2017, has asserted that her expenses were to the tune of Rs. 57,883/-. Both these aspects appear to have been missed by the learned Family Judge while forging her conclusion on the issue concerning maintenance.

25. The other aspect which deserves to be mentioned is that RS is, admittedly, receiving Rs. 5000/- per month from MCS pursuant to order dated 02.02.2015 passed by the concerned court under proceedings taken out



by her under the DV Act.

25.1 As noticed above, MCS was called upon to pay Rs. 5000/- per month to RS because she had agreed to shift to Trilok Apartments, which was, in terms of area, smaller than the house in which she was previously residing with GS.

26. Besides this, MCS, concededly, has been bearing the expenses towards maintenance charges demanded by the residents' society and also gas, water and electricity charges.

26.1 It is also not in dispute that since RS is living in Trilok Apartments, a property owned by MCS, she is not required to forgo money towards rent.

27. These facts have been taken into account by the Family Court to deny maintenance to RS. Therefore, if we were to adjust the deficit between the income and expenditure with the amount received by RS i.e., Rs. 5000/- per month as per the order dated 02.02.2015 passed by the concerned court in the proceedings taken out in the DV Act, RS would require a further sum of Rs. 20,853/- (rounded off to Rs. 21,000/-) to take care of her individual needs. [The amount i.e., Rs 20,853/- is arrived at by adjusting against the income of RS, amounting to Rs. 26,780/-, her expenses quantified at Rs. 47,633/- (Rs. 57,883- Rs.5250<sup>1</sup>- Rs. 5000/-<sup>2</sup>)].

28. Having examined the record and taken into account that MCS is financially better off than RS, and is the owner of at least three (03)

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<sup>1</sup> The details of expenditure provided by RS under the following heads in her income affidavit dated 21.11.2017, cumulatively amounting to Rs. 5,250/-, are subtracted from her total expenditure as they are already covered by MCS: Gas (Rs. 750/- per month ), books/stationery (Rs. 500/- per month) and Private Tuitions (Rs. 4000/- per month) for GS.

<sup>2</sup>The compensation paid by MCS to RS, as per the directions contained in the order dated 02.02.2015 passed by the Additional Sessions Judge, (East), Delhi, *qua* the proceedings taken out by RS under the DV Act.



immovable properties [of which one i.e., Trilok Apartments is in possession of RS and GS], and has made investments in shares and bonds, we are inclined to hold that MCS should pay Rs. 21,000/- per month to RS towards interim maintenance.

28.1 This figure is arrived at bearing in mind that RS and GS do not have to rent out an accommodation. If, however, MCS were to insist upon having RS vacate Trilok Apartments by taking recourse to law, then MCS may have to bear the burden of rent/lease charges of a suitable accommodation which is of like nature. As and when such circumstance arises RS could, perhaps, take recourse to an appropriate remedy.

29. As regards GS, the impugned order dated 22.03.2018 requires MCS to pay her maintenance at the rate of Rs 5000/- per month from the date of filing of the application preferred under Sections 24 and 26 of the 1955 Act, till final disposal of the divorce petition.

29.1 MCS, concededly, has been bearing the burden of educational expenses concerning GS. These expenses include monies expended on fees, textbooks, stationery and transportation. Under these broad heads, the monthly outflow is Rs. 12,000/-.

30. Given the fact that GS is a young adult aged approximately 20 years, she would require money in addition for miscellaneous items, which would include clothes, toiletries, and other personal items. The interim maintenance fixed by the Family Court for GS appears, in our view, insufficient to take care of these expenses.

31. Therefore, according to us, the monthly maintenance concerning GS should be increased to Rs. 10,000/- per month.

31.1 This would be in addition to the amounts already being expended by



MCS towards educational expenses, which have been quantified as Rs 12,000/-.

32. It needs to be emphasized that we passed directions adverted to above in MAT. APP. (F.C.) 171/2018, bearing in mind the various assets that MCS holds, which apart from movable and immovable assets, include investments in bonds and shares, although he claims that his net monthly income is only Rs. 13,115 (this amount is arrived at bearing in mind the information given in MCS's affidavit dated 24.02.2018, wherein he has declared that his monthly income is Rs 81,365/-, against which he has to bear, per month, expenses amounting to Rs 68,250/-).

## **II.MAT. APP. (F.C.) 306/2018**

33. The record shows that based on pleadings, *via* order dated 03.10.2013, the Family Court had, concerning merits, framed three (03) issues. These issues, as noticed right at the beginning, veered around the allegations made by MCS that RS had, after solemnization of their marriage, voluntarily indulged in sexual intercourse with one, SK; had treated him with cruelty, and deserted him for a continuous period of two (02) years immediately preceding the institution of the divorce action.

33.1 The Family Court, as indicated above, *via* the impugned judgment dated 06.08.2018, has sustained the allegation concerning adultery and cruelty leveled by MCS against RS. The accusation of desertion made by MCS against RS has been rejected.

34. Insofar as the allegation of adultery is concerned, the Family Court has accepted the same by basing it on the following circumstances:

- (i) Both RS and SK were colleagues in BSES, Karkardooma, Delhi.
- (ii) SK, who was allegedly RS's paramour, is said to have submitted a letter



dated 14.04.2012 (Ex. PW 1/15), which reads like a mea culpa. The letter (Ex. PW1/15) establishes that RS had “illicit” relations with SK.

(iii) SK, after submission of his reply to the divorce petition filed by MCS, had stopped appearing before the Family Court. In his reply, he did not deny the existence of the aforementioned letter i.e., Ex. PW 1/15. Furthermore, SK did not confront MCS with the letter to establish that the same had not been written by him.

(iv) MCS has averred that when he confronted RS regarding her relationship with SK, she had stated that he was a TV mechanic, which was clearly a lie.

(v) The contents of the aforementioned letter i.e., Ex. PW 1/15 would reveal that SK admitted that he had visited Mathura with RS and also attended with her religious congregations i.e., the satsangs held at Sarojini Garden and Nangli Sahib. Furthermore, in the same letter (Ex. PW 1/15) SK had accepted that he had exchanged phone calls as also SMS frequently with RS and had gone to assure that in future, he would have no relation with RS.

35. The record discloses that RS, in her cross examination, stated that she was not able to identify the handwriting of SK. **Significantly, MCS in his cross examination accepted that he had not seen RS and SK in an “intimate position”.**

36. The Family Court, however, based on what emerged from the contents of Ex. PW 1/15, concluded that RS and SK had an adulterous relationship.

37. In our view, this conclusion is fallacious. The letter i.e., Ex. PW 1/15, even if taken at its face value would establish that, perhaps, the relationship between RS and SK was not platonic; however, for the Family Court to conclude that the two had an adulterous relationship is untenable. In other words, the conclusion drawn by the learned Family Judge that RS, after



solemnization of marriage with MCS, had voluntarily indulged in sexual intercourse with SK, is not borne out from the record. A serious charge concerning adultery would have to be founded on firmer evidence.

38. We may also note that although there is a reference to phone calls and text messages exchanged between RS and SK in the above mentioned letter i.e., Ex. PW 1/15, the contents of the same were not placed on record by MCS.

38.1 The affidavit of evidence of MCS adverts to Ex. PW1/17 wherein, the narrative against the said exhibit is the following:

*“ The copies of itemized bills of mobile used by the Respondent No. 1, showing call details and SMSs exchanged between Respondent No.1 and 2 are exhibited as Ex. PW1/17.”*

38.2 However, in the Family Court records, Ex.PW1/17 was not found. During the course of submissions made before us, the learned counsel who appeared on behalf of MCS has not made any reference to the said exhibit. In any event, it is not even the suggestion of the learned counsel for MCS that the phone calls and SMS establish that RS had voluntarily indulged in sexual intercourse with SK.

39. RS’s interaction with SK may have frayed the marriage between her and MCS but it cannot lead us to conclude that she had committed adultery. Therefore, we are unable to sustain the conclusion arrived at by the Family Court that RS and SK had an adulterous relationship.

40. This brings us to the other allegation that MCS leveled against RS, which is that he was subjected to cruelty by her. In this context, the Family Court has referred to the following:

(i) The uncaring nature of RS in not attending the eye surgery of the



couple's son in 2008.

(ii) The illicit relation between RS and SK.

(iii) The false complaint filed by RS against MCS and his family members alleging that an attempt was made to kill her by forcibly pouring spirit down her mouth.

(iv) MCS had been bearing up with RS's cruel acts for twenty (20) years and therefore, an end had to be brought to the same.

(v) RS had accepted that she has failed in her duties as a wife as reflected in her affidavit dated 24.09.2008 (Ex. PW1/3), the contents of which were denied by her during the course of her testimony.

41. It is required to be noticed that RS in her testimony denied the contents of the affidavit dated 24.09.2008 (Ex. PW1/3) on which reliance is placed by MCS to demonstrate the uncaring approach adopted by RS towards him.

42. As regards the alleged failure of RS to attend the eye surgery is concerned, it was argued that the son, at the relevant point in time [i.e., when the evidence was recorded], was about twenty (20) years of age and hence, he ought to have examined to establish the allegation.

42.1 The Family Court, after noting that the son was not examined, stated that children often find it difficult to take sides in matrimonial disputes concerning their parents. Based on this, the Family Court decided that no adverse inference should be drawn against MCS.

43. Insofar as the affidavit dated 24.09.2008 (Ex. PW1/3) is concerned, in our view, the language of the affidavit seems to suggest that it has not been written voluntarily, although it bears signatures and thumb impressions of RS and her father. The affidavit appears to have been written to patch up the



matrimonial rift between RS and MCS. The language of the affidavit, to put it politely, reeks of obsequiousness. In our opinion, no self respecting women would voluntarily make averments of the type which are found incorporated in the aforementioned affidavit i.e., Ex. PW1/3.

44. That said, we are inclined to agree with the Family Court that the marriage deserves to be dissolved, if for no other reason, for the following:

(i) The couple separated as far back as in 2012. Concededly, there has been no cohabitation between them since then.

(ii) The trust in the marriage appears to have dissolved since the time SK established a relationship with RS, which was more than that of a colleague. The fact that SK took no steps to contest the allegation made against him only reinforces the inference that the presence of SK had contributed to the disruption of the matrimonial relationship between RS and MCS. It is not for us to ascertain, at least, at this juncture, as to why such a situation arose in the first place. The fact that it did, leads us to conclude that dissolving the marriage is the best way forward for the couple. Given the fact that the children have reached the age of majority, and MCS is facing his own physiological challenges, we are inclined to sustain the conclusion arrived at by the Family Court that the marriage needs to be dissolved.

45. Accordingly, the marriage is dissolved on the grounds of cruelty, [*albeit* for the reasons set forth above].

### **Conclusion**

46. Thus, for the foregoing reasons, MAT.APP.(F.C.) 306/2018 is dismissed. Insofar as MAT.APP.(F.C.) 171/2018 is concerned, it is disposed of with the following directions:

(i) MCS will pay interim maintenance at the rate of Rs. 21,000/- per



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month to RS, from the date of institution of the application up until the date of the instant judgment. As indicated above, this amount is arrived at after making adjustments of the compensation ordered to be paid under the proceedings taken out by RS under the DV Act.

(ii) GS will be paid interim maintenance at the rate of Rs. 10,000/- per month from the date of the application up until the date of the instant judgment. This would be in addition to the amount i.e., Rs. 12,000/- per month expended by MCS towards educational expenses of GS. Payments already made towards interim maintenance will be adjusted.

(iii) The arrears concerning interim maintenance payable to RS and GS will be liquidated within eight (08) weeks of the judgment.

47. The aforementioned directions concerning payment of interim maintenance will not come in the way of RS and GS claiming any other relief that may be available to them in law.

48. The appeals are disposed of in the aforesaid terms.

49. Parties will, however, bear their own costs.

**(RAJIV SHAKDHER)**  
**JUDGE**

**(AMIT BANSAL)**  
**JUDGE**

**JULY 18, 2024 / tr**