2026:DHC:4772-DB

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

Reserved on: 09.03.2026

Pronounced on: 29.05.2026

\+ MAT.APP.(F.C.) 109/2023 & CM Nos. 21038/2023, 34406/2024

GAUTAM KAPOOR .....Appellant

Through: Mr. DK Malhotra, Mr. Rajesh Malhotra, Mr. Reymon Singh, Ms. Mahima, Mr. Aditya, Advs.

versus

MRS AAINA KAPOOR .....Respondent

Through: Mr. Ravi Sikri, Sr. Advocate with Mr. Gaurav, Mr. Deepak Yadav, Mr. Nishant, Mr. Rohit, Mr. Vaibhav, Advs. with respondent in person.

CORAM:
HON'BLE MR. JUSTICE VIVEK CHAUDHARY
HON'BLE MS. JUSTICE RENU BHATNAGAR

JUDGMENT

1. The present appeal under Section 19 of the Family Courts Act,

1984 read with Section 28 of the Hindu Marriage Act, 1955 (hereinafter 'HMA') assails the common order dated 15.02.2023 passed by the learned Principal Judge, Family Court, Rohini in HMA No. 219/2019 and MT. Case No. 365/2018, whereby the appellant-husband has been directed to pay pendente lite/interim maintenance of Rs. 1,00,000/- per month, apportioned equally between the respondent-wife and the minor child, with effect from 07.06.2018.

2. The essential facts necessary for the disposal of the present appeal are:

a. The marriage between the parties was solemnised on 16.02.2008 in Delhi according to Hindu rites and ceremonies. Out of the wedlock, one son was born on 15.01.2009. The record reflects that when the impugned order came to be passed, the child was about 14 years of age.

b. The parties began living separately from 26.03.2018 and since then the minor child has been living in the care and custody of the wife.

c. Following the separation, multiple proceedings came to be instituted between the parties. These included proceedings under the Protection of Women from Domestic Violence Act, 2005 (hereinafter 'DV Act'), a petition under Section 125 of

Code of Criminal Procedure, 1973 (hereinafter 'CrPC') and subsequently a petition for divorce under Section 13 of the HMA was filed by the respondent.

d. In both sets of proceedings, the wife's case before the Family Court was that she was not gainfully employed, had no independent source of income and was maintaining herself and the child with the assistance of her parents.

e. The husband opposed the claim for interim maintenance. His case before the Family Court was that the wife was independently earning from multiple sources, including an alleged boutique business, tuition/coaching and was also receiving rental income from properties said to be standing in her name. He further disputed the wife's assertions regarding his own income and means.

f. During the pendency of the proceedings, the Family Court directed the parties to file their respective income affidavits and supporting financial documents. By the common order dated 15.02.2023, the Family Court disposed of both the wife's application under Section 24 HMA and her interim maintenance application in the proceedings under Section 125 CrPC.

g. The Family Court directed the husband to pay Rs. 1,00,000/-

per month as interim maintenance, apportioned as Rs. 50,000/- to the wife and Rs. 50,000/- to the minor child, from the date of filing of the earlier maintenance application i.e. 07.06.2018. Litigation expenses of Rs. 25,000/- were also awarded, with adjustment of any amount already paid.

3. Aggrieved by the aforesaid decision, the husband has preferred the present appeal.

SUBMISSIONS

(on behalf of the appellant)

4. Mr. Malhotra, learned counsel appearing on behalf of the appellant submits that the Family Court failed to consider that the respondent's income tax returns reflected that she was gainfully employed and had income from multiple sources including the boutique stated to be run under the name '*Katyayni*', as well as from tuition/coaching and rental receipts. It is submitted that despite such material being available on record, the Family Court erroneously observed that there was no document to show that the respondent was working either during the subsistence of marriage or after separation.

5. It is submitted that the Family Court erred in shifting the burden upon the appellant to explain banking transactions reflected in

accounts standing in respondent's own name. In particular, it is submitted that the Vijaya Bank account stood solely in the respondent's name and, even according to her own income affidavit, the same did not fall within the category of accounts alleged to have been operated by the appellant.

6. It is submitted that the Family Court failed to consider the entries in the respondent's Vijaya Bank account which duly reflected receipts of rent, including amounts received from Smt. Munesh Devi and Coco Larre Salon in respect of the shop at G-25, Parker Mall, Kundli, Sonipat, Haryana. According to the appellant, these entries indicated rental income in the respondent's name, and yet the Family Court drew adverse inferences against the appellant even though he was neither the owner of that property nor the holder of that bank account.

7. Learned counsel for the appellant further submitted that the respondent had, shortly prior to the parties' separation, sold the property namely MIG Flat No. 84A, Jhang Apartment, Rohini for a sale consideration of Rs. 35 lakhs. It is submitted that the sale proceeds were deposited in the respondent's Vijaya Bank account and were thereafter withdrawn in cash, which the respondent states, was taken by her father. According to the appellant, if that was indeed the

case, there was no reason why the funds would not have been directly transferred to him.

8. It is submitted that the Family Court, while passing the impugned order, failed to take into consideration that the respondent had not filed complete and updated financial documents along with her income affidavit dated 29.08.2019 and had thereby concealed her true financial position. It is submitted that the respondent was receiving rental income from immovable properties, as reflected in her bank statements, while the same was not fully disclosed in her income affidavit.

9. Learned counsel for the appellant further submitted that, according to the appellant's disclosure, the income derived from the jewellery shop at Chandni Chowk, Delhi was approximately Rs. 5 lakhs per annum. It is contended that the Family Court erred in not accepting the said disclosure and instead proceeded on the basis that the actual income of the appellant was higher. In view thereof, learned counsel for the appellant submitted that the impugned order is erroneous, arbitrary and liable to be set aside.

SUBMISSIONS

(on behalf of the respondent)

10. *Per Contra*, Mr. Sikri, learned senior counsel appearing on behalf of the respondent submitted that the appellant's reliance on the alleged boutique or partnership concern was misplaced. He stated that prior to the separation of the parties, the respondent had been made a partner in a concern involving members from the appellant's extended family, namely the appellant's cousin sister and her husband, but when relations deteriorated, she was asked to leave and did so. According to the respondent, the mere fact that her name had figured in such a partnership concern did not establish any present income in her hands.

11. As regards to the property from which rental receipts had earlier been shown, learned senior counsel submitted that the said shop had been given to the respondent by her father and that, at the outset of COVID-19, the tenants vacated the premises, after which the shop had remained vacant. It is fairly stated that this position had not been expressly mentioned in the respondent's income affidavit. Learned senior counsel for the respondent nonetheless contended that the earlier entries could not be treated as proof of any current rental

income in respondent's hands.

12. On the alleged transactions in respondent's account, learned senior counsel for the respondent submitted that the alleged cash flow in respondent's various accounts was confined to the period when the parties were residing together. It is submitted that if the respondent had been, in fact, independently earning in the manner alleged by the appellant, there would have been a continuing pattern of deposits even after the parties separated.

13. On the aforesaid basis, learned senior counsel for the respondent submitted that the impugned order does not suffer from any illegality warranting interference in the present appeal and that the same is liable to be dismissed being devoid of any merit.

14. Though several grounds have been urged in the appeal, no further submissions, beyond those noted hereinabove, were advanced before this Court at the time of hearing.

ANALYSIS

15. Heard learned counsel for the parties and perused the material on record.

16. At the outset, it is necessary to bear in mind that the present appeal arises from an order granting interim maintenance. At this stage, this Court is not expected to finally determine disputed

questions of exact source or character of each transaction reflected in the bank accounts. The enquiry is narrower, namely, whether the material placed before the Family Court disclosed such stable and sufficient independent income in the hands of the respondent as would justify denial or reduction of interim maintenance or whether there is something wrong in assessment of income of the appellant.

17. The first contention of the appellant that needs to be dealt with is that the respondent was not entitled to interim maintenance, since, according to him, the record disclosed independent income in her hands from multiple sources, including a boutique/partnership concern, tuition/coaching classes and rental receipts and that the Family Court failed to appreciate this material and proceeded on an incorrect assumption that the respondent had no source of income. The finding of the Family Court on the said issue is reproduced hereinbelow:

> "*18. ...Nowhere is there a specific assertion on the part of the respondent / husband that the petitioner/ wife was gainfully employed or was running her alleged business that of a boutique under the name and style of 'Katyayni' during this period. Not a single document, no bill book, no lease deed of the premises from where the said alleged boutique was being run, no photograph, no registration certificate of the said boutique, no mandatory GST number, which every business is required to have, has*

been disclosed by the respondent / husband. He has also not mentioned when was this alleged boutique got operational or since when the petitioner / wife was allegedly earning from the said boutique.

***

25. ...Furthermore, as regards the boutique 'Katyayni ', the petitioner has denied running any boutique, and the respondent has not placed on record any evidence, to prove his contention. So at this prima-facie stage, it is accepted that the petitioner/ wife is not having any source of income."

18. Assailing the above reasoning, learned counsel for the appellant submitted that the respondent was associated with a boutique with the family of the appellant and was earning through such concern. He relied upon an earlier income tax return of the respondent for the Assessment Year 2016-17, wherein the nature of business or profession was described as "coaching centre" and "boutique" to contend that she was gainfully employed.

19. In reply, learned senior counsel for the respondent pointed out during the hearing that the respondent had, indeed, at one stage been made a partner in a concern involving members from the appellant's extended family, but that she had thereafter been asked to leave and had ceased to be associated with it.

20. We have perused the record. The income tax return for the

Assessment Year 2016-17 does indicate that, for the said assessment year, the respondent had disclosed business activity. At the same time, we find that it pertains to an earlier period when the parties were still residing together. By itself, it does not establish that the respondent continued to have a stable and sufficient independent income from those sources at the time when the impugned order came to be passed.

21. The mere fact that the respondent's name may have figured in a business arrangement at some point does not, by itself, establish that she had a present and continuing flow of income therefrom at the relevant stage. The same is true of the contention that the respondent was earning by offering tuition or coaching classes. Apart from reliance on the earlier income tax return, no concrete material was shown even before us to establish the nature, place, duration or continuity of such alleged profession at the relevant stage. At the interim stage and in the absence of any material on record *qua* the same, this Court finds that such an allegation could not be accepted as establishing a current and sufficient regular flow of income merely because it was asserted. The Family Court was, therefore, justified in not treating that circumstance alone as a determinative proof of actual earning in the respondent's hands in the event of specific denial by the respondent.

22. Having dealt with the appellant's contentions regarding alleged income from business and coaching activities, it becomes necessary to examine the next limb of his argument, which is founded on the financial entries reflected in the respondent's bank account.

23. The appellant relied upon the entries in the respondent's Vijaya Bank account to show that she was receiving rent in respect of the shop property and that such material was inconsistent with the finding that she had no source of income.

24. In elaboration of the said submission, learned counsel for the appellant drew the attention of this Court to specific entries in the respondent's Vijaya Bank account statement for the period of November 2015 till the year 2017 contending that the pattern of deposits reflected therein was indicative of rental receipts being credited to the said account.

25. During the course of hearing, learned senior counsel for the respondent stated that the shop in question had been vacated around the COVID-19 period and had remained vacant thereafter. It was therefore, urged that the respondent was not deriving any subsisting rental income from the said shop, though that position was not specifically reflected in the income affidavit.

26. Be that as it may, even assuming that the entries pointed out by

the appellant for the period between November, 2015 and 2017 reflected rental receipts in the respondent's Vijaya Bank account, the same would not, by itself, carry the appellant's case much further.

27. The relevant enquiry, for the purpose of interim maintenance, was not whether the respondent had received any rental amount several years earlier, but whether she had a subsisting and regular income at or around the time when her income affidavit was filed and when the Family Court considered the application for interim maintenance.

28. When the Vijaya bank statement is seen for the more proximate period, namely 2019 to 2021, it does not reflect any regular rental inflow of the nature suggested by the appellant. The entries during this period appear to be of a relatively minor character of less than Rs. 3000/- to Rs. 4000/-, including deductions towards recurring deposit instalments of Rs. 1,000/- per month till June, 2019, a credit of Rs. 3,029/- upon closure of such recurring deposit, small interest credits of Rs. 108/-, Rs.115/-, Rs.135/- and Rs.144/- every third month and other routine bank charges or incidental entries. Such entries cannot reasonably be treated as proof of a continuous rental income in the hands of the respondent.

29. This aspect also has to be appreciated in the context of the

admitted timeline of the parties' relationship. The parties separated on 26.03.2018 and therefore, the entries for the period November, 2015 to 2017 pertain to a time when the marriage was still subsisting and the parties were living together.

30. It should also be kept in mind that the respondent's income affidavit was filed in the year 2021 and the impugned order came to be passed only on 15.02.2023. Therefore, even if some rental receipts had existed in the earlier period relied upon by the appellant, the material placed on record did not establish that such rental income continued during the relevant period. The Family Court, therefore, cannot be faulted for declining to treat the earlier bank entries as conclusive proof of present independent income.

31. Another contention raised by the learned counsel for the appellant is that the Vijaya Bank account stood in the respondent's sole name and that the property-linked transactions, including the deposits and withdrawals referable to the flat and the rental receipts, moved through that account and that the Family Court nevertheless shifted the onus to explain the entries on the appellant.

32. The Family Court noticed that the cash flow in the said account was not confined to ordinary personal transactions or isolated cash deposits, but included repeated inflows from other banks, institutions

and third parties, including SBI, Parker Management Services, Munesh Devi, Virender Kumar Manchanda and Praveen Rana.

33. The submission of the appellant must be tested against the timing and pattern of the entries relied upon. Learning senior counsel for the respondent rightly submitted that the cash flow in the accounts was largely during the period when the parties were residing together. If the respondent was, in fact, independently earning from the sources alleged by the appellant, one would expect a continuous pattern of deposits even after the parties separated and particularly around the time when the income affidavit came to be filed.

34. The absence of such continuous deposits after the separation of parties substantially weakens the appellant's contention that the entries of Vijaya Bank account represented an independent, continuous and subsisting source of income of the respondent. Any deposit entries in the bank account of the respondent prior to the separation of the parties is not sufficient to conclude that the respondent is earning or is having sufficient income to maintain her and the child.

35. Moreso, during the arguments before this Court, it was accepted by the appellant that the mobile number reflected in the account details of respondent's Axis bank account was his own mobile

number, which is, suggestive of appellant's control over that account as well.

36. Learned counsel for the appellant also relied upon the respondent's educational qualifications and her alleged capacity to work. In light of the same, he submits that the quantum fixed by the Family Court was excessive.

37. In the opinion of this Court, mere qualification or theoretical ability to earn is not the same as proof of actual earning. It should also be kept in mind that the respondent has the custody of the minor child, whose educational and day-to-day needs are also required to be met.

38. What is required is a realistic assessment of the financial support necessary to enable the claimant-spouse and the child to maintain themselves with reasonable dignity, having regard to their circumstances and the paying capacity of the person against whom the claim is made. Maintenance, particularly where a minor child is involved, cannot be reduced to a calculation of bare survival expenses alone.

39. This Court in ***Subhash v. Mamta @ Raksha***, MAT.APP.(F.C.) 195/2025, while relying on ***Manish Jain v. Akanksha Jain*** (2017) 15 SCC 801, reiterated that a claim for maintenance is not defeated merely because the applicant is educated or theoretically capable of

earning, since the relevant enquiry is whether the applicant has independent income sufficient for her support and for meeting the expenses of the proceedings.

40. The Supreme Court in ***Manish Jain*** (supra) has specifically held that it is no answer to a claim for maintenance that the wife is educated and could support herself. Similarly, relying upon ***Shailja v. Khobbanna***, (2018) 12 SCC 199, this Court in ***Subhash*** (supra) emphasised the distinction between being capable of earning and actually earning, and noted that potential earning capacity cannot be conflated with actual income received.

41. This Court has considered the said submission in the light of the material on record and finds no ground to interfere with the quantum so fixed. No material is placed before the Family Court or even before this Court to prove that the respondent is actually earning, except, the bald statement which is not sufficient to reject the claims of the respondent/wife to the interim maintenance.

42. Another grievance of the appellant is that the Family Court did not properly accept his disclosed income and, instead, assessed his means on a broader appreciation of the surrounding material and that the quantum fixed by the Family Court is excessive and beyond his means. The appellant's case is that his income, as reflected in the

record filed by him, only Rs. 5 lakhs per annum and that the impugned order proceeds on an inflated and unrealistic view of his earning capacity. The respondent, on the other hand, questioned the credibility of the appellant's projected income and contended that the Family Court was justified in not treating his disclosure as conclusive.

43. The Apex Court in ***Rajnesh v. Neha*** (2021) 2 SCC 324, while referring to the principles laid down by this Court in ***Bharat Hedge v. Smt. Saroj Hegde*** 2007 SCC OnLine Del 622 discussed the factors which are required to be considered while determining maintenance, in the following terms:

> *"**84.** The Delhi High Court in **Bharat Hegde v. Saroj Hegde** [Bharat Hegde v. Saroj Hegde, 2007 SCC OnLine Del 622 : (2007) 140 DLT 16] laid down the following factors to be considered for determining maintenance : (SCC OnLine Del para 8)*
>
> > *"1. Status of the parties.*
> >
> > *2. Reasonable wants of the claimant.*
> >
> > *3. The independent income and property of the claimant.*
> >
> > *4. The number of persons, the non-applicant has to maintain.*
> >
> > *5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.*
> >
> > *6. Non-applicant's liabilities, if any.*

> *7. Provisions for food, clothing, shelter, education, medical attendance and treatment, etc. of the applicant.*
>
> *8. Payment capacity of the non-applicant.*
>
> *9. Some guesswork is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.*
>
> *10. The non-applicant to defray the cost of litigation.*
>
> *11. The amount awarded under Section 125 CrPC is adjustable against the amount awarded under Section 24 of the Act."*

44. In ***Bharat Hegde v. Saroj Hegde***, (supra), this Court observed that, in the case of self-employed persons or persons employed in the unorganised sector, truthful income may not always surface, and therefore the Court has to take a general view while assessing financial capacity. The relevant portion has been reproduced as under:

> *"**8.** Unfortunately, in India, parties do not truthfully reveal their income. For self employed persons or persons employed in the unorganized sector, truthful income never surfaces. Tax avoidance is the norm. Tax compliance is the exception in this country. Therefore, in determining interim maintenance, there cannot be mathematical exactitude. The court has to take a general view…"*

45. In the considered view of this Court, no fault can be found with the approach adopted by the Family Court on this aspect. The

appellant is not a salaried employee earning a fixed monthly income under a formal pay structure. He is carrying on business under the name Unnati Jewellers at Chandni Chowk, Delhi, and the case advanced before this Court is that he is, now, the sole proprietor thereof. The Court cannot lose sight of the fact that Chandni Chowk is one of the busiest commercial markets of Delhi and the appellant is running a jewellery shop in that area for several years.

46. In matters concerning a person carrying on business or in cases involving self-employment, the Court is not bound to mechanically accept the income projected in the affidavit or even the figures reflected in the income tax returns as the final word on actual financial capacity. Such material is undoubtedly relevant, but it is not always decisive. The Court is entitled to examine the nature of the vocation, the surrounding circumstances, and the overall probabilities emerging from the record while making a *prima facie* assessment for the purpose of determination of interim maintenance.

47. The scepticism regarding the appellant's projected income also cannot be said to be without basis. During the course of hearing, an arrangement was explored under which the respondent would take the shop in question on rent and pay the appellant a sum of Rs.5 lakhs per

annum. The appellant, however, did not accept that course.

48. This Court does not treat the said choice as conclusive proof of the appellant's actual income. However, it does support the view that the income or financial worth of the shop could not be accepted strictly on the basis of the figure disclosed by the appellant. In a case involving business income, such surrounding circumstances can legitimately be taken into account while making a *prima facie* assessment of earning capacity.

49. It is often noticed that, in matrimonial proceedings, one party tends to suppress income while the other tends to inflate it, and the Court is therefore required to assess financial capacity on the basis of the overall material and surrounding circumstances.

50. In ***Jayant Bhargava v. Priya Bhargava,*** 2011 SCC OnLine Del 1651, this Court, relying upon ***Jasbir Kaur Sehgal (Smt.) v. District Judge, Dehradun & Others***, (1997) 7 SCC 7, recognised that spouses do not always truthfully disclose their real income in maintenance proceedings and that, where rival claims are made with one side inflating and the other suppressing income, some element of guesswork necessarily enters the exercise, which cannot be undertaken with mathematical precision.

51. The record reflects that the minor child was studying in G.D.

Goenka Public School, Sector 22, Rohini, and that the respondent had placed before the Family Court, the educational and other expenses being incurred by her in relation to the child. The impugned order also notes that the school fee, at the relevant time was around Rs.15,000/- per month, apart from other expenses relating to education, transport, food, clothing, and daily upkeep.

52. Even if each item set out by the respondent was not to be accepted at face value, the Family Court was still required to take a broad and practical view of the costs involved in maintaining a school-going child. In that context, the grant of Rs.50,000/- per month for the child cannot be said to be so excessive or wholly disassociated from the record in order to justify appellate interference.

53. A spouse who is not shown to be in settled employment and who is looking after a school-going child cannot be expected to sustain herself and the child without interim support merely on the basis of assumptions regarding earning capacity. It is settled law that a wife and a child is entitled to live in the same standard of living to which they were accustomed to prior to the date of their separation. The Family Court was therefore justified in awarding an amount which was intended to secure reasonable maintenance and not mere subsistence.

54. The appellant also referred, during the course of submissions, to the fact that he had not been able to meet the minor child despite paying maintenance. This Court is of the view that the said aspect does not fall for adjudication in the present appeal. The subject matter of the appeal is the correctness of the order granting interim maintenance under Section 24 of the HMA.

55. The obligation to maintain the spouse and minor child cannot be made contingent upon the grant or denial of visitation. Likewise, payment of maintenance does not, by itself, translate into an enforceable right to compel access to the child in proceedings where no such substantive relief is under consideration.

56. In view of the above discussion, this Court finds no merit in the present appeal. The appellant has failed to demonstrate that the impugned order suffers from such perversity, patent illegality, or material misappreciation of the record as would warrant interference by this Court. Accordingly, the present appeal is dismissed, along with pending applications, if any. The common order dated 15.02.2023 passed by the Family Court in HMA No. 219/2019 and MT No. 365/2018 is upheld. Pending applications, if any, shall also stand disposed of.

57. It is clarified that the observations made herein are confined to

the submissions advanced before us as noted above and for the adjudication of the present appeal against the order of interim maintenance and shall not be construed as final findings on the merits of the disputes pending between the parties before the Family Court or any other competent forum.

VIVEK CHAUDHARY
(JUDGE)

RENU BHATNAGAR
(JUDGE)

MAY 29, 2026/*ka/kp/sm*