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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CM(M) 79/2011

% Date of decision: 12th September, 2011

PUNEET KAUR Petitioner
Through : Mr. Ashok Chhabra with
Mr. Sunjayjyoti Singh Paul,
Adv.
versus

INDERJIT SINGH SAWHNEY Respondent
Through : Respondent in person.

**CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA**

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| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | YES |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

JUDGMENT (ORAL)

CM(M)No.79/2011 and CM No.1756/2011

1. The petitioner has challenged the order dated 26th November, 2010 whereby her application for maintenance under Section 24 of the Hindu Marriage Act was dismissed by the learned Trial Court.
2. The petitioner claimed maintenance and litigation expenses from her husband on the ground that she was unable to maintain herself and her two children aged 13 and 16 years.

The petitioner averred that she was not gainfully employed and was receiving interest income of about ₹8,000/- to ₹10,000/- per month from the investments whereas the monthly expenses of the children were to the tune of ₹25,000/- per month. The petitioner further averred that the respondent was running the business of transport in the name of Bakshi Transport Service and his income was more than ₹2,00,000/- to ₹3,00,000/- per month.

3. The respondent contested the above application before the learned Trial Court on the ground that the respondent was unemployed and had no income. The respondent averred that he was living like a pauper and had no money even for two proper meals a day. He also stated that he had no shelter. The respondent also alleged that the petitioner's annual income was ₹3,00,000/- per month from three sources, namely ₹1,00,000/- to ₹2,00,000/- per month from business, ₹60,000/- per month from salary and ₹20,000/- per month from interest.

4. The learned Trial Court believed the respondent and held that there was no material record to show that the respondent had any income and, therefore, the petitioner's application was dismissed.

5. In **Bharat Hegde v. Saroj Hegde, 140 (2007) DLT 16**, this Court laid down the following principles for fixing the maintenance under Section 24 of the Hindu Marriage Act:-

“4. Right to maintenance is an incident of the status from an estate of matrimony. Interim maintenance has an element of alimony, which expression in its strict sense means allowance due to wife from husband on separation. It has its basis in social conditions in United Kingdoms under which a married woman was economically dependent and almost in a position of tutelage to the husband and was intended to secure justice to her.

5. Section 24 of the Hindu Marriage Act goes a step further inasmuch as it permits maintenance to be claimed by the husband even against the wife.

6. While considering a claim for interim maintenance, the court has to keep in mind the status of the parties, reasonable wants of the applicant, the income and property of the applicant. Conversely, requirements of the non applicant, the income and property of the non applicant and additionally the other family members to be maintained by the non applicant have to be taken into all. Whilst it is important to insure that the maintenance awarded to the applicant is sufficient to enable the applicant to live in somewhat the same degree of comfort as in the matrimonial home, but it should not be so exorbitant that the non applicant is unable to pay.

7. Maintenance awarded cannot be punitive. It should aid the applicant to live in a similar life style she/he enjoyed in the matrimonial home. It should not expose the non applicant to unjust contempt or other coercive proceedings. On the other hand, maintenance should not be so low so as to make the order meaningless.

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. From the various judicial precedents, the under noted 11 factors can be culled out, which are to be taken into consideration while deciding an application under Section 24 of the Hindu Marriage Act. The same are:

- 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 life style 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 guess work 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 Cr.PC is adjustable against the amount awarded under Section 24 of the Act."**

(Emphasis Supplied)

6. In **Jayant Bhargava v. Priya Bhargava, 181 (2011) DLT 602**, this Court laid down the factors to be taken into consideration for ascertaining the income of the spouse. The relevant portion of the judgment is reproduced hereunder:-

“12. It is settled position of law that a wife is entitled to live in a similar status as was enjoyed by her in her matrimonial home. It is the duty of the courts to ensure that it should not be a case that one spouse lives in a life of comfort and luxury while the other spouse lives a life of deprivation, poverty. During the pendency of divorce proceedings the parties should be able to maintain themselves and should be sufficiently entitled to be represented in judicial proceedings. If in case the party is unable to do so on account of insufficient income, the other spouse shall be liable to pay the same. (See *Jasbir Kaur Sehgal (Smt.) v. District Judge, Dehradun and Ors.*, reported at V (1998) SLT 551, III (1997) CLT 398 (SC), II (1997) DMC 338 (SC) and (1997) 7 SCC 7).

13. A Single Judge of this Court in the case of *Bharat Hegde v. Saroj Hegde*, reported at 140 (2007) DLT 16 has culled out 11 factors, which can be taken into consideration for deciding the application under Section 24 of Hindu Marriage Act.

14. Further it has been noticed by the Courts that the tendency of the spouses in proceedings for maintenance is to not truthfully disclose their true income. However, in such cases some guess work on the part of Court is permissible.

15. The Supreme Court of India in the case of *Jasbir Kaur (Smt.)* (supra), has also recognized the fact that spouses in the proceedings for maintenance *do not truthfully* disclose their true income and therefore some guess work on the part of the Court is permissible. Further the

Supreme Court has also observed that “considering the diverse claims made by the parties one inflating the income and the other suppressing an element of conjecture and guess work does enter for arriving at the income of the husband. It cannot be done by any mathematical precision”.

16. Although there cannot be an exhaustive list of factors, which are to be considered in guessing the income of the spouses, but the order based on guess work cannot be arbitrary, whimsical or fanciful. While guessing the income of the spouse, when the sources of income are either not disclosed or not correctly disclosed, the Court can take into consideration amongst others the following factors:

- (i) Life style of the spouse;
- (ii) The amount spent at the time of marriage and the manner in which marriage was performed;
- (iii) Destination of honeymoon;
- (iv) Ownership of motor vehicles;
- (v) Household facilities;
- (vi) Facility of driver, cook and other help;
- (vii) Credit cards;
- (viii) Bank account details;
- (ix) Club Membership;
- (x) Amount of Insurance Premium paid;
- (xi) Property or properties purchased;
- (xii) Rental income;
- (xiii) Amount of rent paid;
- (xiv) Amount spent on travel/ holiday;
- (xv) Locality of residence;
- (xvi) Number of mobile phones;
- (xvii) Qualification of spouse;
- (xviii) School(s) where the child or children are studying when parties were residing together;
- (xix) Amount spent on fees and other expenses incurred;
- (xx) Amount spend on extra-curricular activities of children when parties were residing together;

(xxi) Capacity to repay loan.

17. These are some of the factors, which may be considered by any court in guesstimating or having a rough idea or to guess the income of a spouse. It has repeatedly been held by the Courts that one cannot ignore the fact that an Indian woman has been given an equal status under Articles 14 and 16 of the Constitution of India and she has a right to live in dignity and according to the status of her husband. In this case, the stand taken by the Respondent with respect to his earning is unbelievable.”

7. In the facts and circumstances of this case, both the parties are directed to file their respective affidavits of assets, income and expenditure from the date of the marriage up to this date containing the following particulars:-

7.1 Personal Information

- (i) Educational qualifications.
- (ii) Professional qualifications.
- (iii) Present occupation.
- (iv) Particulars of past occupation.
- (v) Members of the family.
 - (a) Dependent.
 - (b) Independent.

7.2 Income

- (i) Salary, if in service.
- (ii) Income from business/profession, if self employed.
- (iii) Particulars of all earnings since marriage.
- (iv) Income from other sources:-
 - (a) Rent.
 - (b) Interest on bank deposits and FDRs.
 - (c) Other interest i.e. on loan, deposits, NSC, IVP, KVP, Post Office schemes, PPF etc.
 - (d) Dividends.
 - (e) Income from machinery, plant or furniture let on hire.

- (f) Gifts and Donations.
- (g) Profit on sale of movable/immovable assets.
- (h) Any other income not covered above .

7.3 **Assets**

- (i) Immovable properties:-
 - (a) Building in the name of self and its Fair Market Value (FMV):-
 - Residential.
 - Commercial.
 - Mortgage.
 - Given on rent.
 - Others.
 - (b) Plot/land.
 - (c) Leasehold property.
 - (d) Intangible property e.g. patents, trademark, design, goodwill.
 - (e) Properties in the name of family members/HUF and their FMV.
- (ii) Movable properties:-
 - (a) Furniture and fixtures.
 - (b) Plant and Machinery.
 - (c) Livestock.
 - (d) Vehicles i.e. car, scooter along with their brand and registration number.
- (iii) Investments:-
 - (a) Bank Accounts – Current or Savings.
 - (b) Demat Accounts.
 - (c) Cash.
 - (d) FDRs, NSC, IVP, KVP, Post Office schemes, PPF etc.
 - (e) Stocks, shares, debentures, bonds, units and mutual funds.
 - (f) LIC policy.
 - (g) Deposits with Government and Non-Government entities.
 - (h) Loan given to friends, relatives and others.
 - (i) Telephone, mobile phone and their numbers.
 - (j) TV, Fridge, Air Conditioner, etc.
 - (k) Other household appliances.
 - (l) Computer, Laptop.
 - (m) Other electronic gadgets including I-pad etc.
 - (n) Gold, silver and diamond Jewellery.
 - (o) Silver Utensils.
 - (p) Capital in partnership firm, sole proprietorship firm.

- (q) Shares in the Company in which Director.
- (r) Undivided share in HUF property.
- (s) Booking of any plot, flat, membership in Co-op. Group Housing Society.
- (t) Other investments not covered by above items.
- (iv) Any other assets not covered above.

7.4 **Liabilities**

- (i) OD, CC, Term Loan from bank and other institutions.
- (ii) Personal/business loan
 - (a) Secured.
 - (b) Unsecured.
- (iii) Home loan.
- (iv) Income Tax, Wealth Tax and Property Tax.

7.5 **Expenditure**

- (i) Rent and maintenance including electricity, water and gas.
- (ii) Lease rental, if any asset taken on hire.
- (iii) Installment of any house loan, car loan, personal loan, business loan, etc.
- (iv) Interest to bank or others.
- (v) Education of children including tuition fee.
- (vi) Conveyance including fuel, repair and maintenance of vehicle. Also give the average distance travelled every day.
- (vii) Premium of LIC, Medi-claim, house and vehicle policy.
- (viii) Premium of ULIP, Mutual Fund.
- (ix) Contribution to PPF, EPF, approved superannuation fund.
- (x) Mobile/landline phone bills.
- (xi) Club subscription and usage, subscription to news papers, periodicals, magazines, etc.
- (xii) Internet charges/cable charges.
- (xiii) Household expenses including kitchen, clothing, etc.
- (xiv) Salary of servants, gardener, watchmen, etc.
- (xv) Medical/hospitalization expenses.
- (xvi) Legal/litigation expenses.
- (xvii) Expenditure on dependent family members.
- (xviii) Expenditure on entertainment.
- (xix) Expenditure on travel including outstation/foreign travel, business as well as personal.
- (xx) Expenditure on construction/renovation and furnishing of residence/office.

(xxi) Any other expenditure not covered above.

7.6 General Information regarding Standard of Living and Lifestyle

- (i) Status of family members.
- (ii) Credit/debit cards.
- (iii) Expenditure on marriage including marriage of family members.
- (iv) Expenditure on family functions including birthday of the children.
- (v) Expenditure on festivals.
- (vi) Expenditure on extra-curricular activities.
- (vii) Destination of honeymoon.
- (viii) Frequency of travel including outstation/foreign travel, business as well as personal.
- (ix) Mode of travel in city/outside city.
- (x) Mode of outstation/foreign travel including type of class.
- (xi) Category of hotels used for stay, official as well as personal, including type of rooms.
- (xii) Category of hospitals opted for medical treatment including type of rooms.
- (xiii) Name of school(s) where the child or children are studying.
- (xiv) Brand of vehicle, mobile and wrist watch.
- (xv) Value of jewellery worn.
- (xvi) Details of residential accommodation.
- (xvii) Value of gifts received.
- (xviii) Value of gifts given at family functions.
- (xix) Value of donations given.
- (xx) Particulars of credit card/debit card, its limit and usage.
- (xxi) Average monthly withdrawal from bank.
- (xxii) Type of restaurant visited for dining out.
- (xxiii) Membership of clubs, societies and other associations.
- (xxiv) Brand of alcohol, if consumed.
- (xxv) Particulars of all pending as well as decided cases including civil, criminal, labour, income tax, excise, property tax, MACT, etc. with parties name.

8. Both the parties are also directed to file, along with affidavit, copies of the documents relating to their assets, income and expenditure from the date of the marriage up to

this date and more particularly the following:-

- (i) Relevant documents with respect to income including Salary certificate, Form 16A, Income Tax Returns, certificate from the employer regarding cost to the company, balance sheet, etc.
- (ii) Audited accounts, if deponent is running business and otherwise, non-audited accounts i.e. balance sheets, profit and loss account and capital account.
- (iii) Statement of all bank accounts.
- (iv) Statement of Demat accounts.
- (v) Passport.
- (vi) Credit cards.
- (vii) Club membership cards.
- (viii) Frequent Flyer cards.
- (ix) PAN card.
- (x) Applications seeking job, in case of unemployed person.

9. The affidavit and documents be filed within a period of four weeks with an advance copy to opposite parties who shall file their response within two weeks thereafter.

10. List for hearing on 9th November, 2011.

11. Both the parties are directed to remain present in Court on the next date of hearing along with all original documents relating to their assets, income and expenditure.

12. This Court appreciates the valuable assistance rendered by Ms. Prem Lata Bansal, Senior Advocate.

13. Copy of this order be sent to the Principal District Judge for being circulated to the concerned judges dealing with matrimonial cases.

14. Copy of this order be given dasti to learned counsels for both the parties under signature of Court Master.

SEPTEMBER 12, 2011
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J.R. MIDHA, J