



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

Judgment reserved on: 24.11.2023

Judgment delivered on: 04.12.2023

+ MAT.APP.(F.C.) 231/2023

[REDACTED]

..... Appellant

Through: Mr.T.S.Ahuja, Mr.Varun Singh Ahuja
and Ms.Ridhi Kapoor, Advocates.

versus

[REDACTED]

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. The challenge in this appeal under Section 19(3) of Family Courts Act, 1984 and Section 28 of Hindu Marriage Act, 1955 (hereinafter, referred to as 'HMA') is to an order dated April 06, 2023 passed by learned Judge, Family Court, whereby the respondent-husband was directed to pay the maintenance to the minor child @ Rs.20,000/- per month from the date of filing of the application till the decision of the case, while the *pendente lite* maintenance to the appellant wife was declined.

2. In brief, the marriage between the appellant (petitioner before the learned Trial Court) and the respondent was solemnized on September 02, 2000 according to Hindu rites and ceremonies. A female child was born out of the wedlock on December 10, 2010. A petition for dissolution of marriage under Sections 13(1)(ia) & (ib) HMA was preferred by the appellant on September 13, 2019 claiming that the respondent had treated her with cruelty and deserted her, constraining the appellant to live separately w.e.f.



December, 2013. Also, an application under Section 24 HMA was filed along with the petition claiming maintenance @ Rs.75,000/- per month for the appellant and the minor daughter along with litigation expenses.

3. Pursuant to summons issued by the Family Court, respondent entered appearance on December 19, 2019 and submitted that without admitting allegations in the appeal, he had no problem in giving divorce to the appellant wife by way of mutual consent. He further admitted that they had a child who has been studying in Jaipur and was in care and custody of the appellant wife and sought time for giving his offer. Thereafter, respondent remained absent on the next two dates. On account of absence of respondent, learned Judge, Family Court, left with no other option, closed the right to file written statement as well as reply to the application under Section 24 HMA. Further, the respondent was proceeded *ex-parte* on April 04, 2022 and the matter was listed for *ex-parte* evidence of the petitioner/appellant.

4. For the purpose of application under Section 24 HMA, appellant, who is MBA, LLB and professionally qualified in Gems and Gemology, submitted that she started a business in 2008 under the name and style of IDT Laboratory and was doing part-time work. After shifting to Jaipur, she started full-time business and managed to earn Rs.40,000/- from the business. The net worth of the business was disclosed as Rs.15 lacs and gross profits at Rs.4 lacs per annum. In addition to the business, appellant claimed rental income of Rs.15,000/- from immovable property, jointly owned with her cousin. Apart from above, she held four FDRs of Rs.1 lac each, amounting to Rs.4,26,021/- approximately. The monthly expenses on



the education, stationery and entertainment of child were further claimed to be Rs.36,066/- and total monthly expenditure at Rs.1,18,633/-.

5. In the additional affidavit filed by the appellant, it was submitted that respondent husband owned a three bedroom duplex house with terrace rights in South Delhi (i.e. H.No. 402, Mandakini Enclave, Alaknanda, Kalkaji, New Delhi). It was further averred that respondent was maintaining three cars and the parties had visited Mumbai, Shirdi and Goa for a trip in the year 2013 as well as to other places also by air along with stay at five star hotels. The respondent was further stated to be a practicing Advocate, maintaining a double storey chamber in Tis Hazari Complex. The income of respondent, as such, was claimed to be not less than Rs.2 lacs per month.

6. Learned Judge, Family Court denied maintenance *pendente lite* to the wife holding that she is capable of earning and maintaining herself and as such does not require any financial support. Further, the income of the respondent husband who is a practicing Advocate was assessed to be not less than Rs.1 lac per month, in the absence of income and assets affidavit of the respondent. Considering that an amount of Rs.36,066/- per month is being spent on education and other expenses of the minor daughter in custody of the appellant, who is a joint liability of both the parties, respondent was directed to pay Rs.20,000/- per month towards maintenance of the minor child from the date of filing of the application till decision of the case. The appellant wife was also granted litigation expenses of Rs.11,000/-.

7. Aggrieved against the order of maintenance, learned counsel for the appellant reiterates the contentions made before the learned Judge, Family Court. It is further pointed out that since the respondent intentionally chose not to participate in the proceedings, he was proceeded *ex-parte* and a decree



of divorce on the grounds of cruelty and desertion has also been passed in favour of the appellant vide separate judgment dated April 06, 2023. Further, the application under Section 24 HMA has been simultaneously disposed of vide order of even date. The appellant is stated to have been wrongly denied maintenance and it is further prayed that maintenance granted to the child also needs to be enhanced.

8. Learned counsel for the appellant further contends that an adverse inference has to be drawn against the respondent and the affidavit filed by the appellant claiming the income of the respondent to be at least Rs.2 lacs needs to be accepted, keeping in view the fact that respondent has been in practice for over more than 20 years and liabilities, if any, of the respondent have not been brought on record. Learned Judge, Family Court, is stated to have erred by not taking into consideration the status of the parties after the marriage and the fact that the respondent had been maintaining three cars after marriage, though no registration number had been reflected.

It is also claimed that appellant was constrained to live in a tenanted premises and spends a sum of Rs.16,500/- both for self and daughter. The expenses for maintenance of the child are stated to be much higher. Accordingly, it is prayed that the maintenance be enhanced to Rs.75,000/- per month for the appellant along with minor child and litigation expenses of Rs.2 lacs be provided.

9. At the outset, it may be observed that petition under Section 13(1)(ia)&(ib) HMA was preferred on behalf of appellant wife before the Family Court on the grounds of cruelty and desertion along with an application for maintenance under Section 24 HMA. Both the petition for



divorce as well as application for maintenance under Section 24 HMA have been disposed of vide separate orders on April 06, 2023.

In terms of proviso to Section 24 HMA, the proceedings for interim maintenance shall as far as possible, be disposed of within 60 days from the date of service of notice on the contesting spouse. Admittedly, the respondent entered appearance on December 19, 2019 but the application under Section 24 HMA could finally be disposed of only on April 06, 2023 along with petition for divorce. We are of the considered view that wheresoever the contesting party is proceeded *ex-parte* or does not choose to contest the proceedings, the decision on the application for interim maintenance should not be deferred to a later stage of conclusion of the proceedings, as the same defeats the very purpose of legislative intent of providing monthly support to the applicant. An endeavour should be made by the Courts for disposal of interim maintenance application filed by the applicant within 60 days of service of notice.

10. The grievance of the appellant is that taking note of the fact that appellant is engaged in the business of Gems and earns Rs.40,000/- per month from the said business and also derives a rental income of Rs.15,000/- per month, learned Judge, Family Court wrongly denied the maintenance to the appellant holding that she is capable of earning and maintaining herself and as such does not require any financial support for herself from the respondent.

11. Admittedly, the interim maintenance has to be decided on the basis of pleadings and the income and assets affidavit filed on behalf of the parties. A balance has to be drawn between relevant factors as there is no straitjacket mechanism for fixing the quantum of maintenance and *inter alia* includes



the status of the parties, reasonable needs of the wife and dependent children, whether the applicant is educated and professionally qualified, whether the applicant has any independent source of income, whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home, whether the applicant was employed prior to her marriage, whether she was working during the subsistence of the marriage, whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing and looking after adult members of the family. Reliance may also be placed upon ***Rajnish v. Neha and Another, 2020 SCC OnLine SC 903.***

12. The significant point in proceedings under Hindu Marriage Act, 1955 is that the maintenance *pendente lite*/permanent alimony under Section 24/25 of the Act may be claimed by either of the spouses i.e. wife or husband, as the case may be, *who has no independent income sufficient for her or his support along with necessary expenses of the proceedings.* The maintenance sum to be accorded monthly during the proceedings has to be reasonable, having regard to the petitioner's own income and the income of the respondent. The phrase "sufficient for her or his support" has to be interpreted to mean that the applicant is able to maintain with reasonable comfort and the standard of living which the applicant was accustomed in the matrimonial home.

We are of the considered opinion that merely because the wife is earning, it does not automatically operate as an absolute bar for awarding the maintenance. The parameter remains whether her source of income is sufficient to enable her to maintain herself along with minor child. The maintenance has to be realistic, avoiding either of two extremes i.e. neither



oppressive or extravagant, nor meagre to drive the applicant wife to penury or mere support. The duration of the marriage as well as the conduct of the parties, which is apparent on the face of record also needs to be kept in perspective.

13. It is pertinent to note that the obligation of husband to provide maintenance is on higher pedestal than wife since the provision for grant of maintenance/interim maintenance for women and children in the concerned statutes {i.e. Hindu Marriage Act, 1955 (HMA, 1955), Protection of Women from Domestic Violence Act, 2005 (PWDV Act, 2005), Hindu Adoptions and Maintenance Act, 1956 (HAMA, 1956), Code of Criminal Procedure, 1973 (Cr.P.C., 1973) or Special Marriage Act, 1954} is keeping in perspective the underlying principle under Article 15(3) of the Constitution of India. The purpose remains to provide recourse to dependent wife and children by way of financial support to maintain herself along with the child.

We are unable to concur with the observations of learned Family Court that since appellant is capable of earning and maintaining herself, she does not require any financial support from the husband. On the face of record, considering the status of the parties along with the standard of living in the matrimonial home and the income of the respondent, the appellant wife is also entitled to maintenance apart from the minor child.

14. In the present proceedings, since the respondent chose to remain absent during course of proceedings after initial appearance, the task of estimating the income becomes onerous for want of relevant details of the income and assets affidavit of the respondent. An adverse inference has to be drawn against the respondent in the facts and circumstances, since he deliberately chose not to contest the proceedings. The statement of the



appellant wife on the point of status of the parties after the marriage has to be kept in consideration and cannot be overlooked for want of complete particulars. There is no denial to the averments made on behalf of the petitioner/appellant, which the respondent was well aware regarding the ownership of a duplex flat in South Delhi, maintenance of three cars at the relevant time as well as the trips undertaken by the parties after the marriage. Also, the details of ownership regarding the double storey chamber are within the knowledge of the respondent, which he has conveniently chosen to avoid by not contesting the proceedings. The income of any Advocate with a practice of over 20 years would be far more than Rs.1.25 lacs per month, which has been conservatively assessed by the learned Judge, Family Court at Rs.1 lac per month.

15. It has already been observed above that the parameters for determination of maintenance depend upon financial status of the contesting respondent and the amount awarded must be reasonable and realistic. The wife is also entitled to enjoy the same amenities of life as she would have been entitled to in her matrimonial home. The wife in the present case has been constrained to stay in a tenanted premises and bear all the expenses on education, extracurricular activities of the child alongwith medical and other uncertainties of life. No doubt the maintenance of the child is a joint responsibility but the realistic view of the aforesaid expenses and the status of the parties need to be kept into consideration.

16. In the facts and circumstances of the case, we are of the opinion that the appellant wife is also entitled to maintenance @ Rs.15,000/- per month apart from the maintenance @ Rs.20,000/- for the minor child as awarded by the learned Trial Court from the date of filing of application till the disposal



of the proceedings. Maintenance *pendente lite* shall be set off/adjusted against any other amount of maintenance received by the appellant. The respondent shall also be liable to clear the arrears of maintenance within timeline as directed by the learned Judge, Family Court.

17. The impugned order is accordingly modified. No order as to costs. Pending applications, if any, also stand disposed of.

(ANOOP KUMAR MENDIRATTA)
JUDGE

(V. KAMESWAR RAO)
JUDGE

DECEMBER 04, 2023/R/v/sd