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

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Judgment reserved on: 10.01.2024
Judgment pronounced on: 22.02.2024

+ **MAT.APP.(F.C.) 106/2019 & CM Nos.16273-74/2019**

NARENDER SINGH

..... Appellant

Through: Ms Chetna, Advocate.

versus

PRACHI JAIN

..... Respondent

Through: Mr Abhey Narula, Advocate.

CORAM:**HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****AMIT BANSAL, J.:**

1. The present appeal has been filed by the appellant ('Husband') impugning the order dated 18th March, 2019, passed by the learned Principal Judge (South), Family Courts, Saket, New Delhi ('Family Court') whereby, the application filed by the Respondent ('Wife') under Section 24 of Hindu Marriage Act, 1956 ('HMA') was disposed of, directing the Husband to pay a sum of Rs.1,00,000/- per month as *pendente lite* maintenance until the disposal of the divorce petition filed by the Wife under Sections 13(1)(ia) and 13(1)(ib) of the HMA.



2. In the present appeal, the parties were referred to mediation by the predecessor bench. However, as noted in the order dated 17th July, 2019, the mediation was not successful.

3. By way of an interim order dated 8th May, 2019, passed by the predecessor bench, the Husband was directed to pay a sum of Rs.40,000/- per month to the Wife, without prejudice to the rights of the parties.

4. Subsequently, *vide* order dated 16th March, 2023, the parties were directed to file income affidavits in terms of the judgement of the Supreme Court in ***Rajnish v. Neha and Anr.***, (2021) 2 SCC 334. *Vide* order dated 13th September, 2023, Trial Court Record (TCR) was requisitioned. After hearing the counsels for the parties, judgement was reserved on 10th January, 2024. Parties were given liberty to file brief note of arguments, which have been filed on behalf of the parties.

5. Briefly stated, the facts of the case are set out hereinafter:

5.1 The parties got married on 9th February, 1996, as per Hindu rites and ceremonies. Two children were born from the said wedlock on 17th November, 1997 and 14th October, 2000, respectively.

5.2 In the year 1998, the sister of the Husband died, leaving behind two children and the responsibility of bringing up the said children came upon the Husband.

5.3 The Husband has been taking care of the education/ lodging extracurricular activities/ tuitions etc., of the two children born from the wedlock as well as his niece and nephew.

5.4 The Wife had preferred a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 ('DV Act') dated



22nd March 2013. *Vide* judgement dated 17th August, 2016, the petition came to be dismissed by the learned Metropolitan Magistrate, South-East District, Saket Courts, New Delhi.

5.5 Aggrieved by the aforesaid dismissal, the Wife preferred a criminal appeal before the Additional Sessions Judge, Saket Courts, New Delhi, which came to be dismissed. Subsequently, a criminal revision petition has been filed by the Wife, which is pending adjudication before this Court.

6. The present petition arises from a petition filed by the Wife seeking dissolution of marriage by a decree of divorce under Sections 13(1)(ia) and 13(1)(ib) of the HMA dated 3rd February, 2017, before the Family Court (hereinafter referred as ‘divorce proceedings’).

7. Along with the divorce petition, the Wife moved an application under Section 24 of the HMA dated 3rd February, 2017, seeking interim maintenance at the rate of Rs.3,00,000/- per month besides seeking medical expenses, litigation expenses and a place for alternate accommodation during the pendency of the divorce proceedings.

8. During the pendency of the aforesaid application, the Husband volunteered to pay interim maintenance to the tune of Rs.15,000/- per month. Thereafter, the Husband voluntarily increased the said amount to Rs.25,000/- per month.

9. By way of the impugned order, the Family Court, while assessing the monthly income of the Husband in the range of Rs. 5 Lakhs to 8 Lakhs, directed the Husband to pay Rs.1,00,000/- per month as interim maintenance with effect from the date of filing the application till the decision in the



divorce proceedings. The operative portions of the order passed by the Family Court have been set out below:

“22 *Keeping in mind the facts of the instant case, it is not difficult to imagine that respondent must be having monthly income, from all the sources together, in the vicinity of Rs. 5 to 8 lacs per month. I am conscious of the fact that respondent is taking care of his children as well as his nephew and niece. Keeping in mind the overall facts and circumstances of the case, I deem it appropriate to ask non-applicant/respondent to pay pendente lite maintenance @ Rs. 1 lac per month w.e.f. date of filing of the present application till the decision of the case. Ordered accordingly.*

23 *It is also directed that the arrears, after deducting the amount already paid @ Rs. 15,000/- per month or @ Rs. 25,000/- per month as the case may be, be cleared by making additional payment of Rs. 50,000/- per month till the entire such arrears are cleared. The respondent would pay maintenance for the future months regularly by 7th of same month by depositing the amount in bank account of petitioner/applicant. Arrears would also be cleared in the same fashion. Such order be complied by him scrupulously and punctually. It is also made clear that in case there are three consecutive defaults in making payment of maintenance, the defence of respondent may be struck off. However, order in this regard would be passed after hearing both the sides only.*

24 *Respondent was directed to pay part litigation expenses as Rs. 22,000/-. He would pay the same amount toward balance litigation expenses within four months from today. Since maintenance pendente lite has been assessed as Rs. 1 lac per month, which includes almost all the basic necessities, I do not find any requirement of giving any further direction with respect to the prayer seeking alternate accommodation. However, respondent would ensure that he extends due co-operation to enable the reimbursement of medical expenses as per Rules applicable to Delhi Jal Board (employer of the respondent).”*

10. Assailing the impugned order of the Family Court, the Husband approached this Court by way of the present appeal seeking setting aside of the aforementioned order *qua* interim maintenance.



11. Broadly, the counsel appearing on behalf of the Husband has made the following submissions before this Court:

I. The Family Court has erred in assessing the income of the Husband to the tune of Rs. 5 Lakhs to 8 Lakhs per month. The Husband is working as an Assistant Engineer with the Delhi Jal Board wherein his last drawn salary is Rs.1,04,774/- per month. The income affidavit dated 22nd July, 2023, filed on behalf of the Husband clearly establishes that the income of the Husband is nowhere close to the amount as assessed by the Family Court.

II. The Husband has financial commitments towards the upkeep of all four children and therefore he is not in a position to pay a sum of Rs.1,00,000/- per month to the Wife by way of interim maintenance.

III. The contention of the Wife that the Husband earns from multiple sources is incorrect. The Husband does not have any business or other sources of income.

IV. The claim of the Wife that ONGC is a tenant of the property bearing No. C-33, Sector 34, Noida, Gautam Budh Nagar, Uttar Pradesh ('Noida Property'), owned by the Husband is incorrect. ONGC vacated the Noida Property on 30th April, 2018. The said Noida Property has thereafter been leased and is fetching a monthly rental of Rs.35,000/-.

V. The Wife is well-qualified to make her own living rather than depending upon the Husband.

12. *Per Contra*, the counsel appearing on behalf of the Wife has made the following submissions before this Court:



- I. The Family Court has granted the interim maintenance based on the documents on record, including Income Tax Records (ITRs), Balance Sheets and Bank Statements filed by the Husband.
 - II. As per the documents placed on record, it is evident that the Husband is a man of means and has substantial rental/business income and owns several properties.
 - III. In the income affidavit dated 22nd July, 2023 filed on behalf of the Husband, the Husband has deliberately concealed details such as the Bank Statements/ ITRs for the companies incorporated by him, the Proprietorship Concerns, his HUF and/or details of income, including from the sale of assets.
 - IV. It is evident from the record, before the Family Court that the Husband owns a resort at Mukteshwar, Uttarakhand. Further, the Husband owns multiple luxury cars including Audi A6 and Octavia.
 - V. The Husband has admitted before the Family Court that he holds 11 bank accounts. However, the Husband has not filed the statements relating to the said accounts before this Court. Further, the Husband has large cash deposits in his account and is making repeated transfers to his Demat Account.
 - VI. The Wife is suffering from multiple health conditions and is residing in a single-room rented accommodation. After paying the monthly rental of Rs.17,500/-, the Wife is unable to fend for herself.
13. We have heard the counsels for the parties and examined the material on record.



14. It has been admitted by the Husband that he is working as an Assistant Engineer with the Delhi Jal Board and is drawing a salary of Rs.1,04,774/- per month.

15. In the Written Submissions filed on behalf of the Husband, it is stated that the Husband owns multiple properties i.e., the Noida Property, one 2-BHK property at Greater Kailash-II, one agricultural land admeasuring 240 sq. yards in village Supi, Nainital and one ancestral land in village Bulandshahr, Uttar Pradesh.

16. It is a matter of record that the Noida Property was leased by the Husband to ONGC. However, the Husband has not placed the lease deed with ONGC on record. It is the contention of the Wife that as per the Bank Statements of the Husband, filed before the Family Court, ONGC was paying a monthly rental in excess of Rs.3,00,000/-. Further, the Husband had admitted in the proceedings under the DV Act, as far back as on 30th August, 2013, that the Noida Property was fetching a monthly rental of Rs.2,85,000/-.

17. Now, before this Court, the Husband seeks to contend that the Noida Property is fetching a monthly rental of Rs.35,000/-. In this regard, he has placed on record a Rent Agreement dated 16th March, 2019. It is to be noted that the aforesaid Rent Agreement between the Husband and one Rajbir Mishra, is an unregistered document. Further, there are no witnesses who affirm to the signing of the said document.

18. In these circumstances, it is hard to believe that the Noida Property (*admeasuring 300 sq. yards and comprising of 3 floors*) owned by the Husband which was fetching a monthly rental of Rs.2,85,000/-, way back in



2013, would now be fetching a monthly rental of Rs.35,000/-, as contented by the Husband. In our view, the aforesaid Rent Agreement has been created only for the purpose of the present case.

19. The Family Court has correctly noted that, on one hand, the Husband states to have taken a business loan of Rs.90 Lakhs for which he is paying EMIs, whereas, on the other hand, he claims that he has given a ‘friendly loan’ of Rs. 1.63 Crores to his neighbour for construction of his house. For the sake of convenience, the relevant extract from the impugned order is set out below:

“20 *I have carefully gone through the various documents placed on record from the side of respondent. These include ITRs, balance-sheets, bank statements, his pay-slips as well as affidavit of income. As per the affidavit furnished by him in November, 2017, he was getting salary of Rs. 71,205/- per month from Delhi Jal Board. He has also mentioned about annual turnover-cum-receipt from his business concerns which seems quite substantial and it would be, at this stage of the matter, difficult to hold that all such business propositions are losing proposition and that he is not able to generate any income despite having such huge turnover. He has agricultural income. He has rental income. He has also income from interest from various deposits and FDRs, the complete details of which, as per petitioner, not furnished on record. According to respondent, he is, now, not having any rental income but fact remains that he has not bothered to place on record any document to show that such lease deed has come to an end already. He has admittedly taken a loan of Rs. 90 lacs and is also regularly paying the EMIs which also go on indicate that he is possessed with sufficient means. In his affidavit dated 24.05.2018, he also claimed that he had given a loan of Rs. 1.63 crores to his neighbour towards construction of his house against which his such neighbour had deposited title deed of two properties with him as security. Fact, however, remains that on one hand he takes loan of Rs. 90 lacs for his business expansion and on the other hand, he gives loan of Rs. 1.63 crores to his neighbour. He has also successfully paid EMI @ Rs. 71,000/- per month towards car.*



20. The very fact that the Husband could afford to give a loan of such a huge amount to his neighbour and the fact that he has been paying a monthly EMI of Rs.71,000/- per month towards a car, shows that he is a person of means.

21. The Husband claims that there is a heavy financial burden on him on account of him raising the four children and he has had to take loans to meet their educational expenses. It is stated in his income affidavit dated 22nd July, 2023 that a loan to the tune of Rs.12,00,000/- has been taken from LIC *qua* the education of one of the children. A further amount of Rs.19,00,000/- is said to be borrowed from friends and relatives. Once again, it defies logic as to why a person who could afford to give a loan of 1.63 Crores would be required to take a loan of 19 Lakhs from friends and relatives. Even if it is to be believed that the Husband has taken the aforesaid loans, these are not significant amounts in the light of the assets/ income of the Husband.

22. As per the documents filed by the Husband before the Family Court, the companies incorporated and controlled by the Husband as well as his HUF generate substantial income.

23. The record also reveals that the Husband owns a resort and various luxury cars which are in the name of his children and/or his niece and nephew.

24. Therefore, the Family Court has correctly observed that the Husband has various sources of income, including rental income, agricultural income, interest income and business income, which he has clearly concealed.



25. In view of the discussion above, we do not find any infirmity in the order passed by the Family Court. Accordingly, the present appeal is dismissed.

26. As directed by the Family Court in paragraph 23 of the impugned order, all up-to-date arrears shall be cleared by the Husband by making an additional payment of Rs.50,000/- per month, till the time such arrears are cleared.

27. Taking into account that the divorce petition was filed by the wife as far back in 2019, the Family Court shall endeavor to expeditiously decide the same.

28. All pending applications stand disposed of.

**AMIT BANSAL
(JUDGE)**

**RAJIV SHAKDHER
(JUDGE)**

FEBRUARY 22, 2024

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