

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: August 18, 2008

Date of Order: September 18, 2008

CM(M) 949/2008

18.09.2008

Manish Kumar ...Petitioner

Through: Mr. Rakesh Tiku with Mr. Abhinav Bajaj, Advocate

Versus

Mrs. Pratibha...Respondent

Through: Mr. Sanjeev Sindhwani and Ms. Ekta Kalra, Advocates

JUSTICE SHIV NARAYAN DHINGRA

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 judgment should be reported in Digest? Yes.

JUDGMENT:

1. By this petition under Article 227 of the Constitution of India, the petitioner has assailed an order 25th July 2008 passed by learned trial court whereby the learned ADJ awarded a maintenance of Rs.7,500/- per month to the respondent wife under Section 24 of the Hindu Marriage Act (HMA).
2. There is no dispute about the fact that both husband and wife were gainfully employed. Wife claimed that her monthly salary was Rs.28,500 whereas her husband was having monthly salary of Rs.90,000/- per month. She claimed a maintenance of Rs.30,000/- per month.
3. Both husband and wife were working in private companies and their salary statements and other record was placed before the trial court. The trial court found that the take-home salary of wife was Rs.41,900/- and that of the husband was Rs.75,761/- per month respectively. Finding that the salary of the husband was more than the salary of the wife, the trial court granted maintenance of Rs.7,500/- to the wife.
4. I consider that while awarding maintenance to the wife, the trial court has lost sight of the basic ingredients of Section 24. Section 24 of HMA reads as follows:
“24. Maintenance pendente lite and expenses of proceedings.- Where in any proceeding under this Act it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay the petitioner the expenses of the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the Court to be reasonable”
5. From the perusal of Section 24, it is abundantly clear that the object and intent of this Section is to enable the husband or the wife, as the case may be, who has no independent source of income for his or her support and necessary expense of proceedings under the

Act to obtain maintenance expenses pendent lite so that the proceedings may be continued without any hardships on his or her part. The benefits granted under this Section are only temporary in nature and there are other provisions of law where a wife, who is not able to maintain herself, can claim maintenance/permanent alimony from the husband e.g. Section 25 of HMA or under provisions of Hindu Adoption and Maintenance Act. The provisions of this Section are not meant for equivalising the income of wife with that of husband but are meant to see that where divorce or other proceedings are filed, either of the party should not suffer because of paucity of source of income and the Court should pass an order even during the pendency of such a petition, for maintenance and litigation expenses. Where a wife has no income or is without any support for maintaining herself, the Court has to pass an order considering the income and living status of the husband. However, where the wife and her husband both are earning and both are having good salary, merely because there is some salary difference, an order is not required to be passed under Section 24 of HMA.

6. In the instant case, it is nowhere pleaded by the wife in her application under Section 24 that the income being earned by her was not sufficient for her maintenance. Her contention in the application was that the petitioner was liable to bring her to the same status and station as if she was living with him in the matrimonial home. In my view, this is not the intent and purpose of Section 24. The purpose and intent of 24 is quite different as stated above.
7. The salary slips of the wife has been placed on record which show that she was having salary in the range of around Rs.50,000/- per month. Her statement of salary account from February 2007 to January 2008 shows that she had a take-home salary during this year of Rs.6,80,188/-. The average monthly salary was thus Rs.56,682/-. This salary was after deduction of tax, employees provident fund, PF contribution etc. Her gross salary inclusive of tax, provident fund etc was around Rs.80,000/- per month. A person who is earning this much of salary can very well maintain herself with such a standard which may be envy of many and under no stretch of imagination it can be said that the income earned by her was not enough to maintain her. There was no other liability on her. There is no offspring from this wedlock.
8. In view of my foregoing discussion, I consider that the trial court has wrongly allowed maintenance to the respondent wife. The petition is allowed and the impugned order dated 25th July 2008, granting maintenance of Rs.7500/- per month to the wife, is hereby set aside. However, the petitioner would be liable to pay the litigation expenses, as ordered by the trial court. No order as to costs.

September 18, 2008

SHIV NARAYAN DHINGRA J.