2025:DHC:4397-DB

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

Date of decision: 26.05.2025

\+ MAT.APP.(F.C.) 195/2025

SUBHASH .....Appellant

Through: Mr. Ravi Kumar, Mr. Shailesh Kumar Sinha, Mr Suman Kumar, Mr. Rajeev Ranjan, Mr. Shubhanshu Singh and Ms. Nisha, Advs.

versus

MAMTA @ RAKSHA .....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE RENU BHATNAGAR

RENU BHATNAGAR, J. (ORAL)

CM APPL. 32387/2025

1. Allowed, subject to all just exceptions.

MAT.APP.(F.C.) 195/2025 and CM APPL. 32386/2025

2. This appeal has been filed under Section 19 of the Family Courts Act, 1984, challenging the Order dated 19.04.2025 passed by the learned Judge, Family Courts, District Central, Tis Hazari Courts, Delhi (hereinafter referred to as, 'Family Court') in HMA No. 34/2021, titled ***Subhash v. Mamta @ Raksha,*** whereby the learned Family Court allowed the application under Section 24 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'HMA') filed by the

respondent-wife, directing the appellant to pay a monthly payment of Rs. 15,000/- towards the maintenance of the respondent-wife and the child of the parties.

3. Brief facts that give rise to the present appeal are that the marriage between the parties was solemnized on 27.02.2009 at New Delhi in accordance with Hindu rites and ceremonies. One male child was born out of the said wedlock on 11.03.2015, who is currently in the care and custody of the respondent-wife. Due to several differences and acrimonies between the parties, they started living separately on 16.03.2020.

4. The appellant approached the learned Family Court by way of filing a divorce petition under Section 12(1)(c) read with Sections 13(1)(ia) and 13(1)(iii) of the HMA, registered as HMA No. 34/2021.

5. In the said divorce petition filed by the appellant, the respondent-wife filed an application under Section 24 of the HMA seeking *interim* maintenance at the rate of Rs. 30,000/- per month.

6. The learned Family Court, after considering the submissions and the relevant material on record, including the income affidavit of the appellant placed on record before it, assessed the monthly income of the appellant at Rs. 47,128/-. Accordingly, the Court directed the appellant to pay a sum of Rs. 15,000/- per month (Rs. 8,000/- per month towards the respondent-wife and Rs. 7,000/- per month for the support of the child) to be paid by the appellant to the respondent as maintenance.

7. Being aggrieved by the aforesaid direction passed in the impugned order, the appellant has filed the instant appeal.

8. The learned counsel for the appellant submits that the learned Family Court has passed the impugned order based on conjectures and surmises, as it failed to consider the fact that the appellant has been consistently paying the EMIs of a sum of Rs. 15,092/- since 05.01.2018 towards loan of Rs. 17,38,000/- taken for purchase of the property, being Flat No. A. M-912, located on the 9th Floor at Raj Nagar Extension, Ghaziabad, UP, in the joint ownership of the parties. He has also taken loan of Rs. 1,35,000/- for which he is paying EMI of Rs, 4,108/- and a further loan of Rs. 1,50,000/- for which an EMI of Rs. 7,407/- is being paid by him.

9. He has also contended before us that while passing the impugned order, the learned Family Court failed to consider the Mediclaim policy maintained by the appellant, towards which he pays an annual premium of Rs. 23,989/-, and wherein the respondent-wife and their child are also covered.

10. He further contends that the learned Family court erred in interpreting the mandate under Section 24 of the HMA, as a spouse who is well-qualified should not be expected to remain idle and milk out the benefits from the other spouse by seeking benefits in the nature of *pendente lite* alimony.

11. The learned counsel for the appellant further submits that the appellant is a contractual employee, and the presumption that he is a person of immense means is erroneous.

12. In view of the foregoing submissions, the learned counsel for the appellant submits that the impugned order passed by the learned Family Court is untenable in the eyes of law and is, therefore, liable to

be set aside.

13. We have considered the submissions of the learned counsel for the appellant; however, we are not impressed with the same.

14. The Impugned Order takes note of the income affidavits filed by both parties. The appellant admits to being employed as a Data Entry Operator with M/s EDCIL (India) Ltd., drawing a monthly income of Rs. 40,128/-, and further earning Rs. 7,000/- as rental income from a jointly owned property. The learned Family Court, after a detailed analysis of the bank statements and income tax records, rightly concluded that the appellant's monthly income was Rs. 47,128/-.

15. It is trite law that while computing the income of a spouse for the purpose of determining the quantum of maintenance under matrimonial statutes, only statutory and mandatory deductions such as income tax and compulsory contributions to provident fund or similar schemes, are to be considered as permissible deductions.

16. As regards the appellant's claim that EMIs and other loan obligations erode his take-home income, we find no merit in such a contention. Deductions such as house rent, electricity charges, repayment of personal loans, premiums towards life insurance, or EMIs for voluntary borrowings do not qualify as legitimate deductions for this purpose. These are considered to be voluntary financial obligations undertaken by the earning spouse, which cannot override the primary obligation to maintain a dependent spouse or child. In this context, reference may be drawn to the Judgment passed by the Supreme Court in ***Kulbhushan Kumar (Dr) v. Raj Kumari***, (1970) 3

SCC 129, where the Court held as follows:

> *"19. It was further argued before us that the High Court went wrong in allowing maintenance at 25 per cent of the income of the appellant as found by the Income Tax Department in assessment proceedings under the Income Tax Act. It was contended that not only should a deduction be made of income tax but also of house rent, electricity charges, the expenses for maintaining a car and the contribution out of salary to the provident fund of the appellant. In our view, some of these deductions are not allowable for the purpose of assessment of "free income" as envisaged by the Judicial Committee. Income tax would certainly be deductible and so would contributions to the provident fund which have to be made compulsorily. No deduction is permissible for payment of house rent or electricity charges…"*

17. From the above position of law, it is evident that the Courts have consistently held that a person cannot wriggle out of his/her statutory liability to maintain his/her spouse and dependents by artificially reducing his/her disposable income through personal borrowings or long-term financial commitments undertaken unilaterally. Maintenance is not to be assessed based on the net income after such personal deductions, but rather on the "free income" that reflects the actual earning capacity and standard of living of the party concerned.

18. In the present case, other than stating that an amount of Rs. 15,092/- is being paid towards the property bought in the joint name of the parties, the purpose of taking the other loan appears to be motivated to deny maintenance to the respondent and the child. Though, the benefit of the mediclaim is also for respondent, the

amount of premium paid for the same does not, in any manner, make the maintenance amount determined by the learned Family Court, unreasonable or suspect to challenge in the present appeal.

19. The law is also equally settled that a claim for maintenance under Section 24 of the HMA is not defeated merely because the applicant is educated or theoretically capable of earning. The Supreme Court in ***Manish Jain v. Akanksha Jain***, (2017) 15 SCC 801, observed as follows:

> *"16. An order for maintenance pendente lite or for costs of the proceedings is conditional on the circumstance that the wife or husband who makes a claim for the same has no independent income sufficient for her or his support or to meet the necessary expenses of the proceeding. It is no answer to a claim of maintenance that the wife is educated and could support herself. Likewise, the financial position of the wife's parents is also immaterial. The court must take into consideration the status of the parties and the capacity of the spouse to pay maintenance and whether the applicant has any independent income sufficient for her or his support. Maintenance is always dependent upon factual situation; the court should, therefore, mould the claim for maintenance determining the quantum based on various factors brought before the court."*

20. It is also significant to underscore that the concept of being capable of earning and actually earning are distinct. It is trite law that potential earning capacity cannot be conflated with actual income received. In this regard, the observation of the Supreme Court in ***Shailja v. Khobbanna***, (2018) 12 SCC 199, are as follows:

> *"That apart, we find that the High Court has proceeded on the basis that Appellant 1 was*

> *capable of earning and that is one of the reasons for reducing the maintenance granted to her by the Family Court. Whether Appellant 1 is capable of earning or whether she is actually earning are two different requirements. Mere capacity to earn is not, in our opinion, sufficient reason to reduce the maintenance awarded by the Family Court."*

21. It is also pertinent to note that the respondent is suffering from a medical condition and is simultaneously responsible for the care and upbringing of the minor child born out of the wedlock. The physical, emotional, and financial responsibilities, coupled with the burden of single-handedly raising a child, particularly while managing one's own health constraints, place an additional burden upon the respondent. In such circumstances, the inability to engage in full-time or gainful employment cannot be viewed as a voluntary choice, but must be seen in light of the practical limitations imposed by her dual responsibilities. The requirement of maintenance, therefore, stands not only in the absence of income but also on the inability to earn, due to genuine and compelling circumstances.

22. Therefore, we find no merit in the contention that the maintenance awarded is excessive or unwarranted, especially considering the needs of two individuals and the appellant's disclosed income. The learned Family Court has rightly held that such an obligation flows from Section 24 of the HMA, and a husband, even if employed on a contractual basis, cannot shirk his statutory responsibility under the pretext of financial liabilities voluntarily undertaken.

23. In the present appeal, the appellant has failed to demonstrate

any illegality, perversity or procedural impropriety in the Impugned Order warranting interference by this Court. The findings of the learned Family Court are based on cogent material on record, including bank statements, tax returns and income affidavits submitted by both parties, and are in accordance with the binding guidelines laid down *in* ***Rajnesh v. Neha***, 2020 SCC OnLine SC 903.

24. For the aforesaid reasons, the appeal is devoid of merit and is accordingly dismissed.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

MAY 26, 2025/sm

Click here to check corrigendum, if any