



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 17.11.2023

Judgment delivered on: 21.11.2023

+ MAT.APP.(F.C.) 196/2023, CM. APPL. Nos.34480 & 34482/2023

CHETRAM MALI

..... Appellant

Through: Mr.Aditya Gaur and Mr.Krishan
Bhardwaj, Advocates.

versus

KARISHMA SAINI

..... Respondent

Through: Mr.Sachin Bansal, Ms.Arati Sharma,
Ms.Sakshi Mahajan and Mr.Gaurav
Chauhan, Advocates.

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. Present appeal has been preferred challenging the impugned order under Section 24 of Hindu Marriage Act, 1955 ('HMA' for short) dated April 24, 2022 passed by learned Judge, Family Court (South), Saket, New Delhi in HMA 318/2022, whereby the appellant was directed to pay the respondent a sum of ₹30,000/- per month towards maintenance *pendente lite* from the date of filing of the petition till its disposal along with litigation expenses of ₹51,000/-.

2. In brief, appellant was married to respondent on November 19, 2018 as per Hindu rites and ceremonies. Further, respondent returned back to her



parental home on July 07, 2020 owing to differences between the parties. Respondent is stated to have preferred a complaint under Section 12 of Protection of Women from Domestic Violence Act, 2005 ('PWVD Act' for short) against the appellant and his family members on January 27, 2021, wherein the appellant was directed to pay ₹21,000/- per month to the respondent as maintenance vide order dated December 12, 2022. Appellant also preferred the divorce petition against respondent before the Family Court wherein the impugned order has been passed under Section 24 of HMA, directing the appellant to pay ₹30,000/- per month towards maintenance *pendente lite* to the respondent along with litigation expenses.

3. Learned counsel for the appellant contends that appellant was directed to pay a sum of ₹21,000/- per month as maintenance in the proceedings under PWDV Act, which has been enhanced to ₹30,000/- in the proceedings under Section 24 of HMA without any change in circumstances. The gross salary of the appellant in terms of salary slip for May, 2022 is stated to be ₹1,04,276/- but in hand salary is claimed as ₹47,784/-. It is further submitted that respondent is a Graduate from Delhi University and working as Receptionist in Shuddhi Ayurveda Panchkarma Hospital and earning more than ₹25,000/- per month. Also, a sum of ₹11,000/- is stated to have already been paid to the respondent towards litigation expenses. It is vehemently urged that learned Trial Court failed to appreciate that appellant is the only earning member in the family and has to support his sisters, brothers and aged parents. It is further submitted that appellant had also borrowed a loan of ₹4 lakh from his employer for marriage of his younger brother and was paying instalments towards the same.



4. On the other hand, the order passed by the learned Trial Court is supported by learned counsel for the respondent. It is admitted that maintenance was awarded @ ₹21,000/- per month in the proceedings under PWDV Act but the same is stated to have been challenged before the Court of Sessions and is pending consideration. It is further urged that in the reply, it was pointed out that respondent is merely working as a Social Worker and is not drawing any salary from the hospital. The current salary of the appellant is stated to be much more than ₹1,04,000/- per month as was drawn in May, 2022.

5. Learned Judge, Family Court, after taking into consideration the affidavit of assets, income and expenditure filed by the parties in terms of ***Rajnish v. Neha, 2020 SCC OnLine SC 903***, along with relied upon documents observed that the respondent had no independent source of income, which may be sufficient for her support and necessary expenses of the proceedings as no material or reliable details could be brought on record that she is working as a Receptionist and drawing the salary, as alleged by the appellant. It was also noticed that though as per affidavit filed by the appellant, a sum of ₹19,450/- is being incurred on payment of EMIs but no details in this regard had been mentioned except that as per pay slip, a sum of ₹18,093/- is being deducted from the salary of appellant towards society recovery, which could not be taken into consideration for computation of liability of the appellant.

6. We have given considered thought to the contentions raised.

As per the copy of pay slip for the month of May, 2022 filed on record, out of gross salary of ₹1,04,276/-, deduction of ₹25,000/- is reflected



against 'court recovery', ₹17,425/- against 'society recovery' apart from other statutory deductions. Thus, the net salary received by the appellant after deductions and recoveries is ₹56,492/-. The reasons for granting higher maintenance *pendente lite* of ₹30,000/- per month when compared to maintenance of ₹21,000/- per month awarded in the proceedings under PWDV Act initiated by the respondent, have not come up in the impugned order. Even, no substantial change of circumstances after passing of order in proceedings under PWDV Act has been brought to our notice. There is nothing on record to infer that deductions as per the pay slip have been initiated by appellant only after the commencement of litigation between the parties to escape maintenance. In the facts and circumstances, while considering the quantum of maintenance, the liabilities of the appellant along with his duties towards other family members cannot be ignored.

It may be noticed that though respondent claims to have no independent source of income but has reasonable educational background being a graduate from Delhi University. She appears to have voluntarily undertaken social work as claimed despite there being no impediment for undertaking a meaningful employment. The spouse having a reasonable capacity of earning but who chooses to remain unemployed and idle without any sufficient explanation or indicating sincere efforts to gain employment should not be permitted to saddle the other party with one sided responsibility of meeting out the expenses. The equivalence does not have to be with mathematical precision but with the objective to provide relief to the spouse by way of maintenance *pendente lite* and litigation expenses, who is unable to maintain and support during the pendency of proceedings and to



ensure that party should not suffer due to paucity of source of income. The provision is gender neutral and the provisions of Section 24 & 25 of HMA provide for the rights, liabilities and obligations arising from marriage between the parties under HMA.

7. We are of the considered opinion that maintenance *pendente lite* at the rate of ₹21,000/- per month to the respondent, as paid in the proceedings under PWDV Act from the date of filing of the petition before the learned Family Court till its disposal would be reasonable. The same shall be paid along with litigation expenses/arrears in terms of impugned order passed by the learned Judge, Family Court. Further, considering the inflation and rising prices, the maintenance *pendente lite* during the pendency of divorce proceedings shall be enhanced @ ₹1,500/- per month for each succeeding year (i.e. @ ₹22,500/- per month *w.e.f.* January 01, 2024; ₹24,000/- per month *w.e.f.* January 01, 2025 and so on till disposal of the petition).

The impugned order is accordingly modified and appeal is disposed of in aforesaid terms. No order as to costs. Pending applications, if any, also stand disposed of.

(ANOOP KUMAR MENDIRATTA)
JUDGE

(V. KAMESWAR RAO)
JUDGE

NOVEMBER 21, 2023/sd