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

% *Decided on:4th April,2022*

+ [REDACTED]

[REDACTED]Appellant

Represented by: Mr. Sunil Kumar, Advocate.

versus

[REDACTED] Respondent

Represented by:

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

NEENA BANSAL KRISHNA, J. (ORAL)

CM APPL. 16706/2022 (Exemption)

1. Allowed, subject to all just exceptions.
2. Application is disposed of.

MAT.APP. (F.C.) 38/2022 & CM APPL. 16705/2022 (stay)

1. The petitioner/ husband is aggrieved by the Order dated 21st, February, 2022 directing him to pay maintenance in the sum of ₹20,000/- per month to the respondent/wife and daughter Varnika Singh under Section 24 of Hindu Marriage Act,1955 (*hereinafter referred to as the Act*).
2. Facts in brief are that appellant and respondent got married according to Hindu customs and rites on 24th February, 2011 in Ramgarh, Jharkhand and were blessed with a daughter [REDACTED] February, 2015. The relationship between the parties deteriorated over a period of time, but the watershed moment came in their life in May, 2016, when the appellant came

to know about the adulterous relationship of his wife, the respondent with her cousin brother. He left the matrimonial home on 22nd May, 2016 and shifted with his brother. The appellant/husband made a complaint dated 27th May, 2016 to SHO, PS Indirapuram about the adulterous acts of the respondent. Thereafter, he filed a Divorce Petition being HMA No.699 of 2016 (renumbered as HMA No.1089 of 2018) on the ground of cruelty and adultery which is pending adjudication before the Family Court, East, Karkardooma, Delhi.

3. The respondent, on the other hand, filed a complaint being CT No.59546 of 2016 under Section 12 of The Protection of Women Against Domestic Violence Act, 2005 which is pending adjudication before the Mahila Court, East, Karkardooma, Delhi. She has also filed a FIR No.1151 of 2016 P.S. Indirapuram under Section 498A IPC.

4. The respondent in divorce petition, filed an application under Section 24 of the Act dated 24th January, 2017 claiming maintenance for herself and her daughter in the sum of ₹45,000/- per month. The learned Judge, Family Court assessed the income of the appellant to be ₹1,09,000/- per month and granted a sum of ₹20,000/- per month as maintenance for the respondent and the daughter w.e.f the date of filing of the application till the date of disposal of the petition.

5. The appellant has challenged the Order on the ground that the Ld. Family Judge has erred in assessing the income of the appellant as ₹1,09,000/- per month. He had lost his job and is presently working as a freelance sales professional having an income of approximately ₹40,000/- per month. On the other hand, the respondent/wife is a highly educated woman and has been working in the past. She, in her Income-Expenditure

affidavit dated 22nd January, 2022 has disclosed that she had been earning ₹10,000 to 12,000/- per month till lockdown i.e., till March, 2020. In fact, the respondent has not disclosed her correct employment status.

6. Heard submissions.

7. Essentially the challenge in the present appeal is to the quantum of maintenance fixed by the learned Family Judge. Before venturing into the facts it may be appropriate to consider that the provision for maintenance has been made in various Acts. One of the earliest enactments is Code of Criminal Procedure, Section 125 of which provided for maintenance to wife, dependent children and parents upto ₹500/- per month though by Amendment Act [REDACTED] September, 2001, the cap of ₹500/- has been removed. The reason for providing maintenance under Code of Criminal Procedure essentially was to address destitution and vagrancy which many a times, drives a person in desperation to commit crime. The objective was essentially to provide basic subsistence for survival as a preventive measure against commission of crime. The maintenance under Protection of Women Against Domestic Violence Act, 2005 is to give immediate succour to a women who is a victim of domestic violence. It is under Hindu Maintenance and Adoption Act, 1956 that the parties may establish their respective claims to maintenance according to their status after adducing evidence in a trial. The objective of Section 24 of Hindu Marriage Act, 1955 is not to equalize the income of the spouses but is only intended to ensure that when matrimonial proceedings are filed, either party should not suffer due to paucity of a source of income and is provided maintenance to tie over the litigation expenses and also to meet the daily needs of the spouse, as has been held in the case of K.N. Vs. R.G 2019 SCC

Online Delhi 7704.

8. In the light of above stated objective of Section 24 of the Act, it may be considered if the impugned order requires interference. The respondent had claimed the income of the appellant to be more than ₹1,00,000/- per month. The learned Family Judge has mentioned that there were three affidavits of Income and Expenditure filed by the appellant. In his affidavit dated 2nd March, 2019 he had stated that he was doing a private job and earning ₹42,000/- per month. As per his second affidavit dated 19th February, 2018 his income is shown to be ₹65,000/- per month. In his latest affidavit dated 15th February, 2022 the appellant has claimed that he lost his job in October, [REDACTED] ing about ₹40,000/- per month by working as freelance sales professional. Ld. Judge, Family Court referred to the statement of RBL Bank of the appellant annexed along with the subsequent affidavit dated 15th February, 2022 which reflected his salary as ₹82,410/- for the months of May 2021 and July, 2021. The Statement of Account of Axis Bank of the appellant reflected a credit of ₹1,09,000/- as salary on 13th January, 2022 which had not been denied by the appellant. The learned Judge, Family Court thus, rightly concluded the income of the appellant as ₹1,09,000/- per month as borne out from his own documents.

9. The appellant has also claimed his monthly expenditure to be ₹52,000/- per month which includes the house rent in the sum of ₹9,900/- per month and other medical, grocery and litigation expenses. In addition, he has claimed the responsibility of his aged parents and their medical bills. However, it has been pointed out by the respondent that father of the appellant is a pensioner getting pension and all the medical bills of the parents are being reimbursed by his erstwhile employer which has again not

been seriously refuted by the appellant. Moreover, even if it is accepted that appellant has to take care of the parents then too, he cannot deny his responsibility to maintain his wife and the daughter.

10. The appellant has claimed that the daughter is not residing with the respondent but with the maternal grandparents in Ramgarh, Jharkhand. Even if the daughter is living with the grandparents, it cannot be said that the respondent stands absolved of his responsibility towards the child.

11. The respondent is M.Sc., residing in a rented accommodation in Shakarpur, Delhi since the date of separation. She has claimed a monthly expenditure of herself to be around ₹50,000/- per month and about ₹25,000/- for the daughter [REDACTED] has also disclosed that she is a freelance content writer and before lockdown was getting about ₹10,000 to ₹12,000/- per month, but she has not been able to do any work on account of lock down. This is not a case where the respondent who has done M.Sc is sitting idle out of laziness or spite, but has been utilizing her skill and qualifications to work as freelance content writer and was earning about ₹10,000 to ₹12,000/- pr month. However, the earnings cannot be considered sufficient for her to meet the routine expenditure and also other incidental expenses of litigation.

12. The respondent may be qualified and may be earning about ₹10,000 to ₹12,000/- per month from her freelance work and but by no parameter can the earnings of the respondent be considered sufficient to meet the day to day expenditure of herself and the daughter and also the litigation expenses. Even after taking into consideration the respondent's earnings, then too ₹20,000/- per month as awarded by the learned Family Judge for monthly maintenance for both the respondent as well as the daughter, cannot be

termed as exorbitant or excessive.

13. There is no merit in the present appeal which is hereby dismissed.

