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

Reserved on: 07.04.2025
Pronounced on:01.07.2025

\+ MAT.APP.(F.C.) 135/2025, CM APPLs.20493-96/2025

SACHIN KUMAR DAKSH .....Appellant

Through: Appellant (present in person)

versus

MAMTA GOLA & ORS ....Respondent

Through: Ms. Charu & Mr. Shubham Kumar, Advs. for R-1 & R-2.

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

J U D G M E N T

RENU BHATNAGAR, J.

1. The appellant/husband has challenged the Order dated 07.12.2024 passed by the learned Family Court-01, South-West District, Dwarka Courts, New Delhi (hereinafter referred to as, 'Family Court') in HMA 587/2022, titled ***Sachin Kumar Daksh v. Mamta Gola & Anr***., whereby the application filed by respondent No.1/wife under Section 24 of the Hindu Marriage Act, 1955 (hereinafter referred to as, 'HMA'), seeking maintenance for herself and the minor child, was disposed of with the following direction:

> *" 18. Keeping in view of above facts and circumstances and income and liability of the parties, this application filed by respondent No.1 is allowed. Respondent No.1 is awarded*

pendente lite maintenance for herself @ Rs. 30,000/- per month from the date of filing of this application till the date of this order & @ Rs. 10,000/- from the date of this order till the disposal of divorce petition and for minor daughter @ Rs. 15,000/- per month from the date of application till the disposal of divorce petition."

2. The appellant/husband and respondent no. l/wife were married on 11.12.2019 as per Hindu rites and ceremonies. However, on account of incompatibility and differences in their married life, they could not pull on together, and the appellant/husband filed a divorce petition under Section 13(1)(i) and 13(1)(ia) of HMA, 1955. The appellant also levelled allegations of an adulterous relationship on the part of the respondent no.1 with two other individuals after the solemnization of the marriage. A female child was born from the wedlock of the parties, who is currently in the care and custody of respondent no.1. The parties have been residing separately since 10.03.2021. In the aforesaid divorce petition, the respondent no. 1 had filed an application under Section 24 of the HMA, which was disposed of *vide* the Impugned Order.

3. It is contended by the appellant that the respondent no.1 was working as a Finance Executive at the Miric Biotech, Barakhamba Road, Delhi, in addition to being a registered Insurance Planner with Tata AIA, a Health Insurance Planner at HDFC ERGO and APOLLO MUNICH Insurance companies. It is alleged that she did not disclose her true income before the learned Family Court. It is further stated that respondent no.1 is well educated, holding B.Tech. and MBA

degrees. She allegedly did not disclose details of her PNB Bank accounts, including a Fixed Deposit account, and failed to submit her Income Tax Returns for the past three years. On account of these alleged concealment, the appellant/husband had also filed an application under Section 340 read with Section 195 of the Code of Criminal Procedure, 1973 against the respondent no.1, which is stated to be pending adjudication. An application for serving interrogatories is also pending adjudication before the learned Family Court, to which no reply has been filed by the respondent no.1. However, later, as a part of her reply to the interrogatories, the respondent No.1 filed bank statements of her PNB and SBI accounts, along with Income-Tax Returns for the year 2016 to 2021, which allegedly reflect that she was earning approximately Rs.3 lakhs per annum before marriage and continued to earn significantly even after filing the maintenance petition.

4. It is further contended that the respondent no.1 deliberately diverted her income through cash or other modes to show a reduced income, which is evident from her earnings before her marriage. By underreporting her income, she is alleged to have committed fraud upon the Court. It is submitted that she falsely claimed in her maintenance petition that she had not been earning for the last 2 years, that is, since April 2021.

5. It is also contended that the learned Family Court erred in inferring that the respondent no.1 was not employed or earning from ACS Academy or Vikram Consultancy, during the year 2022. It is stated that the appellant has proof to confirm that the respondent no.1

is working as a teacher for play school and kindergarten children at ACS Academy, Dwarka Mor. It is submitted that in view of this concealment of facts, she is not entitled to any maintenance. In support of this submission, the appellant placed reliance on the Judgment of this Court in ***Niharika Ghosh @ Niharika Kundu v. Shankar Ghosh,*** 2023 SCC OnLine Del 5624, which was also upheld by the Supreme Court in Special Leave to Appeal (C) No (s). 28264/2023, *vide* Order dated 29.01.2024, titled ***Niharika Ghosh @ Niharika Kundu v. Shankar Ghosh***. He further placed reliance on the Judgments in ***Shama Rahul Moholkar v. Rahul Deorao Moholkar,*** 2017 SCC OnLine Bom 9012; ***Shehnaz Arvind Mudbhatkul v. Arvind Ramkrishna Mudbhatkul (Dr.),*** 2011 SCC OnLine Bom 1245; ***Smt. Mamta Jaiswal v. Rajesh Jaiswal,*** 2000 SCC OnLine MP 580; ***Sejalben Tejasbhai Chovatiya v. State of Gujarat*** 2016 SCC OnLine Guj 6333.

6. It is further contended that the appellant had been voluntarily paying maintenance towards the minor child, since January 2022, after obtaining her PNB account details of respondent No.1, which was earlier upheld by the learned Family Court on 10.04.2023.

7. We have heard the appellant in person and perused the record.

8. The marriage of the parties, their relationship, the date of separation, the birth of the child, and her custody with the respondent no.1 are not in dispute between the parties. Admittedly, the respondent no.1 is well-educated and has completed B.Tech and MBA. Before the learned Family Court, the respondent no.1 claimed that she is unemployed but worked as an insurance agent and earning Rs.2,000-

Rs.5,000/- per month as commission from policies sold earlier. The appellant, however, could not produce any material before the learned Family Court to show that respondent no.1 is currently working. The ITRs of the respondent No.1 from previous years show that she earned Rs.3 lakhs per annum earlier. Even her association with a company at Aligarh, Uttar Pradesh, as an intern, could not raise any inference of her earnings during the pendency of the case. No proof that the respondent no. 1 was working as a teacher at ACS Academy, Dwarka Mor, was filed before the learned Family Court by the appellant. The said contention of the appellant cannot be raised before us in an appeal as being raised for the first time. The appellant is free to raise this issue before the learned Family Court by taking the proper legal remedy.

9. Though, the respondent No.1 is well-qualified, it is an admitted fact that the parties separated when the child was very young and as such, in order to take care of the child, the respondent no.1 might have left her previous job. We cannot lose sight of the fact that the capability to earn and actual earnings are two separate things and a wife may leave her job due to family circumstances or to take care of the child, and with the passage of time, she may not be able to secure suitable employment due to lack of experience or other factors. In such circumstances, merely on the basis of her capability to earn, she cannot be denied maintenance for herself and the child.

10. Although the respondent no.1 was not *prima facie* shown to be working or earning before the learned Family Court, however, on the basis of the capability of the respondent no.1 and her qualifications,

the learned Family Court had assessed her potential income to be Rs.25,000-Rs.30,000/- per month. After comparing her assessed income to the actual income of the appellant, which was to the tune of Rs.1,74,354 per month, the learned Family Court had granted the aforementioned *ad-interim* maintenance to the wife and the child. The amount of Rs.10,000/- per month to the wife and Rs.15,000/- per month towards the daughter, cannot be considered excessive, keeping in view the high cost of living, spiraling price index of the essential commodities, the needs of the wife and the growing child, and the social status of the parties. In our view, the said amount is just, apt, appropriate and necessary for the respondent/wife to maintain a lifestyle commensurate with that of the appellant/husband.

11. One of the contention being raised by the appellant before us is that while granting maintenance to the respondent, the learned Family Court has failed to consider the fact that the appellant also has a liability to pay maintenance to his mother to the tune of Rs.35,000/- per month in terms of the order passed by learned Family Court, Ahmedabad in CRMA No. 555/2023. As per the observation of the learned Family Court in the impugned order, the said maintenance amount of Rs.35,000/- per month was granted on the basis of the willingness of the appellant. The said observation of the learned Family Court has not been disputed before us by the appellant. Be that as it may, if the mother of the appellant requires the maintenance of Rs.35,000/- per month from the appellant/her son and Rs.15,000/- per month from her husband, then seen in the said context, the award of maintenance by the learned Family Court to the tune of Rs.10,000/-

per month to the wife and Rs.15,000/- per month to the daughter should not have been agitated as being excessive by the appellant before us.

12. It would not be out of context to mention that the father of the appellant is a pensioner and receives a pension of Rs.35,000/- per month, and the sister of the appellant is a teacher in a school and earning for herself. The mother of the appellant is, therefore, more appropriately considered a dependent of the father of the appellant, not the appellant himself.

13. As far as the arguments of the appellant that the learned Family Court has not taken into consideration his liabilities and the personal loans taken by him is concerned, it is the settled law that no relaxation for any personal loan or society loan or for purchase of any house or investment in any house, can be given in the matters of maintenance, as the loans are being taken by the appellant for his own benefit. Moreover, in the present case, the learned Family Court has already taken the same into consideration while passing the Impugned Order, and we do not find any infirmity in the same.

14. In view of the aforementioned discussion, we find no infirmity in the Impugned Order passed by the learned Family Court. The disposal of the application under Section 340 of the Cr.P.C. as well as the application raising interrogatories, is within the domain of the learned Family Court and is not the subject matter of the present appeal filed against the impugned order granting *ad-interim* maintenance to the respondent no.1/wife and the child/respondent no.2.

15. Accordingly, the present appeal along with the pending applications stands dismissed as being devoid of any merit.

16. No observation made in this order shall be treated by the learned Family Court as an expression of opinion while deciding the case/applications pending before it.

RENU BHATNAGAR, J.

NAVIN CHAWLA, J.

JULY 01, 2025*/pr/kz/DG*

Click here to check corrigendum, if any