

IN THE HIGH COURT OF DELHI AT NEW DELHI Dated of Reserve: July 28, 2008 Date of Order: September 10,

2008

CM(M) No.539/2008

10.09.2008

Vijay Kumar ...Petitioner

Through: Ms. Sunita Harish, Advocate Versus

Harsh Lata Aggarwal ...Respondent Through: Mr. M.S. Rohilla, Advocate JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not ?
3. Whether judgment should be reported in Digest ? JUDGMENT:

1. By this petition under Article 227 of the Constitution of the India, the petitioner has assailed the order dated 29th February 2008 passed by learned trial court whereby the application of the respondent/wife filed under Section 24 of Hindu Marriage Act, 1955 was allowed and the trial Court granted a maintenance of Rs.10,000/- per month to the respondent wife and also directed the husband to pay (petitioner herein) Rs.15,000/- as litigation expenses.

2. The respondent wife in this case is an advocate. She is a postgraduate in law and holds a diploma in Tax and is an advocate in the Supreme Court of India. She is also a notary public authorized by the Government to attest documents. On the other hand, the petitioner is a retired engineer. He was working in CPWD. After retirement, he opened two private limited companies viz Integrated Techno Systems Pvt. Ltd and Integrated Techno Construction Private Limited. He is one of the directors in both the companies.

3. Wife alleged that though she was an advocate and a notary public, but she had no regular income from her profession and that during her stay in the

matrimonial home, she was not allowed to practice. She was not able to maintain herself. About her husband, she stated that her husband was having an income of approximately Rs.1 lac per month from various projects. He also had a flat in Chirag Delhi worth Rs.20 lac and a flat near Chattarpur Mandir worth Rs.10 lac. He was maintaining a car and was having FDRs. The assets of both the companies were around Rs.40 lac.

4. The petitioner contended that he was having a pension of Rs.4192/-. He was getting a remuneration of Rs.10,000/- per month from the company Integrated Techno Systems Pvt.Ltd. The other company 'Integrated Techno Construction was a non functional company and suffered heavy losses. The petitioner also admitted he owned a flat at Chirag Delhi worth Rs.4.5 lac and a plot at Village Asola worth Rs.1.10 lac. He denied that assets of his companies were of Rs.40 lac.

5. About his wife he submitted that his wife was earning interest in excess of Rs.8387/- per month from various investments. She was also earning income through her joint business with her father and relatives. She was enrolled as advocate with Bar Association of the Supreme Court of India and she had not disclosed her income from all sources, but still has admitted her income as Rs.12,067/- per month.

6. Both the parties filed documents qua their income. Income tax returns, balance sheets and affidavits etc were filed. The learned trial court, despite having entire material before her, did not assess the income of both parties and passed an order merely looking at the status of the husband as a qualified engineer having experience and directed him to pay a maintenance of Rs.10,000/- per month to the wife. The order is very strange. It is not known to the law to fix the maintenance for wife looking at the qualification and experience of a person ignoring the qualifications and experience of the wife. If the husband was an engineer, the wife was an advocate. If the husband was having experience

as an engineer, the wife was having experience as an advocate and was a notary public. Mere assertion of wife that she was in the past not allowed to practice, would not mean that she has no professional income. She was enrolled as a member of the bar. She had shown her previous income in her income tax returns.

7. It was expected of the trial court to assess the income of both the sides. The maintenance was not be fixed by merely looking at the qualification

of the husband, ignoring the qualifications of the wife. The trial court also ignored the fact that the wife's previous application under Section 24 was dismissed by a speaking order by its predecessor after taking into account the material placed before it and the entire material was discussed. In order to justify passing a different order, the trial court should have at least given reasons why she differed from the previous order dated 24th July 2006.

8. A perusal of the income tax returns of the wife for the years 2001 to 2005 shows that the wife has been depositing regularly Rs.70,000/- per month in her PPF account. She was having an LIC Policy where she had been paying minimum of Rs.9600 every year. She had been having an interest income from investments and interest income from post office, UTI and from deposits with Rajdhani Supply Company etc of around more than Rs.60,000/-. She had also shown her professional income after deducting expenditure in the year 2004-05 as Rs.58,813/-. Her balance sheet in respect of assets and liabilities shows that she had total assets in the form of units and deposits etc of Rs.12,73,615/-. Thus, her monthly savings itself was around Rs.7000/-. Only that person can save Rs.7000/- per month, who has sufficient monthly income. If it is presumed that her savings are 1/3rd of her entire income, her income would come to around Rs.20,000/- per month. The income of the husband, as reflected from the income tax returns and other documents, is also of the same level. The husband's annual income from the salary and pension was Rs.1,72,000/-. He earned interest of Rs.13,742/- and had

paid insurance premium of Rs.14,000/-. His total savings under Section 80(1) and 80(ccc) of the Income Tax Act was Rs.86,706/- .

9. I consider that the income of both husband and wife is almost same. Both are almost equally qualified. There was no justification before the trial

court to grant any interim maintenance to the wife.

10. As a consequence, the impugned order of learned trial court is hereby set aside, as far as interim maintenance is concerned. However, the husband shall pay the litigation expenses, as ordered by the learned trial court.

11. The petition stands disposed of in above terms. September 10, 2008 SHIV NARAYAN DHINGRA J. Rd