(2008) 02 DEL CK 0094

In the Delhi High Court

Case No : CM (M) No. 349 of 2007

Sh. Sudhir Diwan APPELLANT

Vs

Smt. Tripta Diwan and Another RESPONDENT

Date of Decision : 18-02-2008

Acts Referred:

Citation : (2008) 147 DLT 756 : (2008) 1 DMC 481 : (2008) 8 ILR Delhi 70

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Sanjiv Bahl, for the Appellant; S.K. Chaudhary, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The petitioner is aggrieved by the order dated 14.2.2007 disposing of an application filed by the wife claiming maintenance u/s 24 of the Hindu Marriage Act. Rs. 10,000/- per month has been directed to be paid by the petitioner to his wife.

2. The wife is admittedly working as a stenographer in the District Courts and is drawing a gross monthly salary of Rs. 24,516/- as of November 2006. Deductions per month are Rs. 5,185/-. In other words the wife has a take home income of about Rs. 19,000/-.

3. Two children, a son and a daughter were born to the parties. The son was born on 17.2.1988. The daughter was born on 22.6.1994. Technically, the son being major, petitioner is entitled to urge that he is not responsible to pay any money for the upkeep of the son.

4. But I note that the son is still a student and his mother is spending money for his upkeep.

5. I would be expanding on this a little later.

6. With respect to the income of the husband, the Matrimonial Judge has

recorded that the petitioner is not truthfully disclosing his income. I note that the petitioner took a stand that his gross annual income does not exceed Rs. 1.2 lacs. Disbelieving the said version of the petitioner, learned Tribunal has noted as under:-

In the year 1988-89, the defendant was able to earn commission for his LIC agency to the tune of Rs. 80,000/- which went up to about Rs. 1,00,000/- in the next year and it kept on increasing year after year. In the year 1990, the defendant has loaned Rs. 30,000/- to R.L.Dewan and managed to invest Rs. 30,000/- in the NSC. The documents indicate that the investments and savings kept on increasing and even he has been generously loaning money to the other persons and even gifted Rs. 20,000/- to one Mr. S.K. Gandhi. A gift to Naresh Arora to the tune of Rs. 10,000/- was given and even a plot was also purchased in the year 1993 in Sainik Vihar so on and so forth. Against the backdrop of the facts and circumstances, the defendant is claiming that he is earning much less than the plaintiff whereas he has cash in hand as on 31.3.2004 to the tune of Rs. 1,60,000/- and odd Rupees, which kept on increasing year after year, so is the case with the bank accounts of the defendant, but when it comes to provide for his wife and children, the defendant finds it a bit cumbersome and financial constrains block his way.

7. At the hearing held on 14.2.2008 it was urged by learned Counsel for the petitioner that the petitioner was working as an agent with Life Insurance Corporation and that his income was by way of commission received from LIC. With reference to the profit and loss account and income tax returns for the period ending 31.3.2003, 31.3.2004 and 31.3.2005 it was urged that the annual income from professional earnings as reflected therein as also reflected in the income tax returns was around Rs. 1.2 lacs per annum. Counsel thus urged that the Matrimonial Judge could not have returned a presumptive finding of income. Second contention urged was that the wife had occupied the matrimonial house and was not paying any rent. On the contrary, the husband was forced to shift out and take a premises on rent. It was urged that said aspect has been ignored by the Matrimonial Judge. Lastly, it was urged that the income of the wife at Rs. 20,000/- per month has been ignored by the Matrimonial Judge.

8. In the decision reported as Smt. Jasbir Kaur Sehgal Vs. District Judge, Dehradun and others, in para 7 it was observed by their Lordships in the Supreme Court as under:

It does appear to us from the affidavit of the husband that it conceals more than what it tells of his income and other assets. Attempt has been made to conceal his true income and that leads us to draw an adverse inference against the husband about his income that it is much more than what is being disclosed to us. The claim of the husband that from an income of Rs. 4,750/- per month which is getting from Mukul International Pvt. Ltd. he has to maintain himself, his two sons and daughter is absurd particularly when the eldest son is earning more than the husband and it is the husband who is living with him. Husband has also not disclosed retiral benefits if any from the ONGC and the amount of provident fund he obtained form there. Husband has interest income from Unit Trust of India and also from the fixed deposit receipts but again he has not disclosed the number of units he is holding and the amount of the fixed deposits in his name. From all these we have to hold that the annual income of the respondent-husband is even on modest estimate to be Rs. 2,40,000/- annually which would come to Rs. 20,000/- per month. Considering the diverse claims made by the parties one inflating the income and the other suppressing an element of conjecture and guess work does enter for arriving at the income of the husband. It cannot be done by any mathematical precision.

9. I need not note any other authority to bring home the legal preposition that where a party does not truthfully disclose its income an element of conjuncture and guess work has to inevitably enter in the decision making process.

10. The balance sheet/statement of affairs of assets and liabilities filed by the husband along with his income tax returns for the period ending 31.3.2003, 31.3.2004 and 31.3.2005 is as under:

MR.SUDHIR DEWAN (LIC - AGENT) 3F-54, NIT FARIDABAD BALANCE SHEET/ STATEMENT OF AFFAIRS OF ASSETS & LIABILITIES AS AT 31.3.2003 Liabilities Amount Assets G. Amount Net Amount

Capital A/c (Old) 5,51,434 .13

Motor Car (Old) 1,96,640.00

Add: Net Profit 1,18,688.68   Less: Dep. @20% 39,328.00 1,57,312.00

Add: Interest on I.T. Refund 4,340.00 Scooter (Old) 10,800.00 Add: Short Term FDR 2,515.00   Less: Dep. @25% 2,700.00 8,100.00

Add: SB A/c Intt. received 1,719.00 LIC Mutual Fund 10,000.00 Add: Maturity of LIC Policy 10,219.00 FDR in S.Bank, GGN. (New) 45,000.00 Less: H.H. Expenses 24,000/- 6,88,915.81

Shares/Uniss of BOI ''S'' MF 4,500.00   Less: LIC prem. paid 74522.60

Shares of S.V. Copr. Group H.Society (Old) 1,500.00 Less: Intt. on LIC H. Loan 12504/-

Flat in S.V. Coop. Group H. Society, Delhi (Old) 5,50,000.00 Less: Mediclaim 2693/-

TDS (137406-37980+ 37348) 1,36,774.00 Less: Intt. on LIC P. Loan 13994/- 1,27,713.60

Motor Cycle LML (Old) 24,750.00 5,61,202.21

Loans & Advances :-

Less:Dep. @ 25% 6,188.00 18,562.00 Car Loan of LIC (147604.20-25776.30)

1,21,827.90 SB A/c No. 9263 (V. Bank, FBD.) 17,119.91

SB A/c. No. 40784 (S.Bank, G.Gn.) 1,663.00 LIC H. Loan (Old) 2,50,560.00

SB A/c. No. 34309 (PNB, FBD.) 248.95 LIC P. Loan (Old 160681 + 4979 New 69600 Re-paid) 95,560.00

SB A/c. No. 743 (Canara Bank, G.Gn.) 548.78 10,29,150.11 Cash in hand 77,821.47 10,29,150.11 MR.SUDHIR DEWAN (LIC - AGENT) 3F-54, NIT FARIDABAD BALANCE SHEET/STATEMENT OF AFFAIRS OF ASSETS & LIABILITIES AS AT 31.3.2004Liabilities Amount Assets Amount

Capital A/c (Old) 5,61,202.21 Motor Car (Old) 1,57,312/- Add: Net Profit 1,32,967.00 Less: Dep. @20% 31,462/- 1,25,850.00

Add: Interest on I.T. Refund 2,630.00 Scooter (Old) 8100/- Add: Short Term FDR 4,229.00 Less: Dep. @25% 2025/- 6,075.00 Add: SB A/c Intt. received 2,245.00

LIC Mutual Fund (Old) 10,000.00 Add: Maturity of LIC Policy 18,293.00 FDR in S.Bank, GGN. (New) 49,229.00 Add: Gift from wife (Triple) 45,000.00 Shares/ Uniss of BOI ''S'' MF (Old) 4,500.00 Less: H.H.Exp. 18,457/- 7,66,566.21 Shares of S.V. Copr. Group H. Society (Old) 1,500.00 Less: Intt. On LIC H. Loan 76,420.10

Flat in S.V. Coop. Group H. Society, Delhi (Old) 5,50,000.00 Less: Mediclaim 12,504/- TDS (1,36,774-38, 220+40,365) 1,38,919.00 Less: Intt. on LIC P. Loan 2,770/- 1,10,154.10 Motor Cycle LML (Old) 18,562/- 6,56,412.11 Less: Dep. @25% 4640/- 13,922.00

Loans & Advances :- Car Loan of LIC 93,708.30 SB A/c No. 9263 (V. Bank, FBD.) 12,006.91

LIC P. Loan (Old) 95,560.00 SB A/c. No. 40784 (S.Bank, G.Gn.) 25,723.00 LIC H. Loan (Old) 2,50,560.00 SB A/c. No. 34309 (PNB, FBD.) 248.95 10,96,240.41 SB A/c. No. 743 (Canara Bank, G.Gn.) 548.78

Cash in hand 1,06,687.77 10,96,240.41 MR.SUDHIR DEWAN (LIC - AGENT) 3F-54, NIT FARIDABAD BALANCE SHEET/STATEMENT OF AFFAIRS OF ASSETS & LIABILITIES AS AT 31.3.2005Liabilities Amount Assets Amount

Capital A/c (Old) 6,56,412.11 Motor Car (Old) 1,25,850/- Add: Net Profit 1,30,887.00 Less: Dep. @20% 25,170/- 1,00,680.00 Add: Interest on I.T. Refund 4,372.00 Scooter (Old) 6075/- Add: SB A/c Intt. received 1,309.00 Less: Dep. @25% 1518.75 4,556.25 Add: Maturity of LIC Policy 12,104.00 LIC Mutual Fund (Old) 10,000.00 Add: Intt. on FDR Matured 2,863.00 Invertor/ Battery (New) 7,500.00 8,07,947.11

Gold Jewellery (New) 30,000.00 Less: H.H.Exp. 24,000/- Shares of S.V. Copr. Group H.Society (Old) 1,500.00 Less: LIC Prem. Paid 83,378/-

Flat No. 546 (GF) H.B.Colony in Sec.21-D, Fbd.,(105990+7616) 1,13,606.00 Less: Intt. on H.Loan 13,516/- Flat in S.V. Coop. Group H.Society, Delhi (Old) 5,50,000.00 Less: Mediclaim paid 2,827/- 1,23,721.00 TDS (1,38,919-77, 148+41, 254) 1,03,025.00 6,84,226.11

Motor Cycle LML (Old) 13,922/-

Loans & Advances :- Less: Dep. @25% 3480.50 10,441.50 Car Loan of LIC 65,588.70

SB A/c No. 9263 (V. Bank, FBD.) 89,021.91 LIC P. Loan (Old + New) 2,44,360.00 SB A/c. No. 40784 (S.Bank, G.Gn.) 70,116.00

LIC H. Loan (Old) 2,41,906.00 Cash in hand 1,45,634.15 12,36,080.81 12,36,080.81

11. The aforesaid statement of affairs makes interesting reading. For the year 1.4.2002-31.3.2003 petitioner has paid LIC premium in sum of Rs. 74,522.60/-. In the next year nothing has been shown as paid towards LIC premium but thereafter for the year 1.4.2004-31.3.2005 LIC premium has been paid in sum of Rs. 83,378/-.

12. Further, for the period 1.4.2002-31.3.2003 petitioner has invested Rs. 45,000/- in a fixed deposit with a bank. The petitioner has cash in hand at the close of the financial year in sum of Rs. 77,821/- besides approximately Rs. 20,000/- in the bank. Similarly, for the next financial year i.e. 1.4.2003-31.3.2004 petitioner has shown cash in hand in sum of Rs. 1,06,687.77 besides approximately Rs. 40,000/- in the bank. For the next financial year cash in hand has increased to Rs. 1,45,634.15/-. Cash lying in bank is approximately Rs. 1.69 lacs. In the said financial year jewellery worth Rs. 30,000/- were also been purchased.

13. It is impossible to accept that a person who earns a net income of Rs. 1.2 lacs would have such heavy investments in LIC policies as also would retain such huge sums in cash or in saving bank account.

14. In the profit and loss account it would be interesting to note that the husband has been showing having paid salaries to staff in sum of Rs. 1.08 lacs per annum.

15. According to the wife her husband operates without any support staff.

16. It is obviously a case where the petitioner is resorting to jugglery of figures. The only clue of the true income of the petitioner which this Court has is of the investments being made by the petitioner and amount retained by way of cash in hand.

17. Under the circumstances a presumptive finding that the net annual income of the petitioner is around Rs. 4 lacs per annum would not be an incorrect finding.

18. How much should the husband share with his wife?

19. If the husband has not to pay any money to the wife for the welfare of the major son who I note is still a student, it would certainly be open to be urged from the side of the wife that since she is discharging her moral obligation to educate her son she would be entitled to a reduction of said amount from her income. In other words, viz-a-viz her net income, same would have to be reckoned taking note of the needs of the son who is a major but is otherwise not earning a penny.

20. In discharge of her moral obligations towards her son a monthly expense of Rs. 7,500/- could reasonably be expected to be spent by the mother. Thus, the respondent would be left with Rs. 12,500/- per month for self and her daughter.

21. At an annual net income of Rs. 4 lacs the monthly income of the husband would be approximately Rs. 30,000/- per month. He must Therefore share at least 1/3rd thereof with his wife. So sharing, husband would be left with a little over Rs. 20,000/- per month for his personal expenses.

22. On the evidence on record, contours whereof have been briefly noted by me hereinabove, I find no infirmity in the impugned order.

23. The petition is dismissed.

24. No costs.