

(2011) 01 DEL CK 0190
In the Delhi High Court
Case No : CM (M) 566 of 2008

Sucheta Zutshi Nee Pandita		APPELLANT
	Vs	
Pankaj Pandita		RESPONDENT

Date of Decision : 12-01-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
Hindu Marriage Act, 1955 — Section 24

Citation : (2011) 177 DLT 156 : (2011) 1 DMC 558 : (2011) 2 JCC 1263

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : Ajay Kumar, for the Appellant; Nemo, for the Respondent

Final Decision : Allowed

Judgement

G.S. Sistani, J.—Present petition is directed against the order dated 3.3.2008 passed by learned Additional District Judge, Delhi, on an application filed by Petitioner u/s 24 of Hindu Marriage Act, in HMA No. 274/2007, seeking interim maintenance for herself and for her minor child. Learned trial court vide its order dated 3.3.2008 has granted maintenance @ Rs. 4000/- per month, to the Petitioner (wife) and Rs. 2500/- per month, to the minor child.

2. Learned Counsel for the Petitioner submits that maintenance awarded by the trial court is extremely unreasonable and insufficient for the Petitioner and her school going minor son, who is stated to be seven years of age. Counsel further submits that Petitioner has no other source of livelihood. Learned Counsel for the Petitioner has drawn the attention of the Court to an affidavit filed by the Petitioner in this Court in compliance with the order dated 21.4.2010 in which a categorical assertion has been made by the Petitioner that she is not employed.

3. Learned Counsel for the Petitioner submits that although Petitioner is residing with her parents but she has to pay for the school fee, school uniform, transport and other expenses. Counsel further submits that learned trial court while

passing the order for maintenance has failed to take into consideration the family background of the parties and the standard of living, which was being maintained by them in their matrimonial home.

4. Learned Counsel for the Petitioner submits that Respondent (husband) is a Senior Software Engineer, which is evident from the salary slip, which has been placed on record. Counsel further submits that salary slip of the Petitioner would show that the annual income of the Respondent is Rs. 4,81,014/-. Counsel also submits that even in case the deductions are made with respect to conveyance allowance, house rent allowance and Provident Fund, this would still leave the Respondent with an income of more than Rs. 30,000/-, per month. Counsel next submits that Petitioner and her son are entitled to a similar lifestyle as was being enjoyed by her in her matrimonial home. The counsel for the Petitioner submits that despite having considered these factors and also discussed the settled position of law, the trial court has granted maintenance @ Rs. 4,000/- to the Petitioner (wife) and Rs. 2,500/- to the minor child.

5. Despite various opportunities having been granted, reply to this petition has not been filed by the Respondent. None had appeared on behalf of the Respondent on the last date of hearing. None has chosen to appear on behalf of the Respondent even today.

6. I have heard learned Counsel for the Petitioner and also perused the order dated 3.3.2008 passed by the learned trial court and the salary slip of the Petitioner, which has been placed on record.

7. The factors to be considered while deciding an application u/s 24 of Hindu Marriage Act can never be exhaustive and the courts must consider the facts of each case. The following undisputed facts which emerge are that marriage between the parties was solemnized on 31.10.2001. Out of the wedlock between the parties a son was born, who is presently 7 years of age and is studying in a private school. Parties separated in the year of 2006. The trial court has observed in its order that Respondent is working as an Engineer in a multinational company and is getting a monthly salary of Rs. 34,000/-, per month, approximately. The trial court has further observed that the Respondent has shown his monthly expenses as Rs. 22,000/-, per month, by including his LIC premium and income tax.

8. A Single Judge of this Court in the case of Sh. Bharat Hegde Vs. Smt. Saroj Hegde, had culled out following 11 factors, which can be taken into consideration for deciding the application u/s 24 of Hindu Marriage Act, relevant portion of which reads as under:

8. Unfortunately, in India, parties do not truthfully reveal their income. For self employed persons or persons employed in the unorganized sector, truthful income never surfaces. Tax avoidance is the norm. Tax compliance is the exception in this country. Therefore, in determining the interim maintenance, there cannot be mathematical exactitude. The court has to take a general view.

From the various judicial precedents, the under noted 11 factors can be culled out, which are to be taken into consideration while deciding an application u/s 24 of the Hindu Marriage Act. The same are:

- (1) Status of the parties.
- (2) Reasonable wants of the claimant.
- (3) The independent income and property of the claimant.
- (4) The number of persons, the non applicant has to maintain.
- (5) The amount should aid the applicant to live in a similar life style as he/she enjoyed in the matrimonial home.
- (6) Non-applicant's liabilities, if any.
- (7) Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.
- (8) Payment capacity of the non-applicant.
- (9) Some guess work is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.
- (10) The non-applicant to defray the cost of litigation.
- (11) The amount awarded u/s 125, Code of Criminal Procedure is adjustable against the amount awarded u/s 24 of the Act.

9. The Petitioner is to maintain herself and her minor school going child. I find force in the submission of learned Counsel for the Petitioner that a total sum of Rs. 6500/- awarded by the trial court for the wife and a minor school going child is extremely insufficient as besides food and other day-to-day expenses, the Petitioner has to pay for school fee of the children, transport, uniform and other expenses claimed by the school. The annual income of the Respondent as per his salary slip is approximately Rs. 40,000/- per month. Even if deduction at the rate of Rs. 10,000/- per month are taken into account, the Petitioner is entitled to higher interim maintenance. Having regard to the facts of this case and applying the settled position of law, I find that the order of the trial court granting interim maintenance @ Rs. 4000/-, per month, to the Petitioner, and Rs. 2500/-, per month, to her minor son, is extremely insufficient and unreasonable. The Petitioner is entitled to enjoy a similar lifestyle as she enjoyed in her matrimonial home. Further, the court has to consider the reasonable wants of the Petitioner and the maintenance should not be unreasonably low.

10. Taking into consideration the present price index, I am satisfied that it is not possible for the Petitioner to maintain herself and her minor school going son with dignity with a meager amount of Rs. 6500/-, per month, Accordingly, the impugned order dated 3.3.2008 passed by learned trial court is set aside. Interim maintenance for the Petitioner and her minor son is fixed at Rs.

15,000/-, per month, to be paid by the Respondent. All arrears shall be cleared by the Respondent within two months from today.

11. Accordingly, petition is allowed, in above terms.