

07.

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CM(M) 169/2009

% **Judgment Delivered on: 31.03.2011**

RANI SETHI Petitioner

Through : Mr. G.K. Sharma, Adv.

versus

SUNIL SETHI Respondent

Through : Mr. B.P. Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether the Reporters of local papers may be allowed to see the judgment? **Yes**
2. To be referred to Reporter or not? **Yes**
3. Whether the judgment should be reported in the Digest? **Yes**

G.S.SISTANI, J. (ORAL)

1. Present petition is directed against the order dated 24.2.2009 passed by learned Additional District Judge, Delhi, on an application filed by respondent (husband) under Section 24 of Hindu Marriage Act, seeking maintenance from the petitioner (wife). By the abovesaid order, trial court has directed the petitioner (wife) to pay maintenance to the respondent (husband) @ ₹20,000/-, per month, and ₹10,000/- as litigation expenses and also to provide Zen Car for the use of the respondent (husband).
2. Learned counsel for the petitioner submits that learned trial court has exceeded its jurisdiction and has erroneously come to a finding with regard to the income of the petitioner. While it is not in dispute that petitioner is carrying out the business of running paying guest

hostels in the name of Pradise PG, it is submitted by counsel for the petitioner that the trial court has failed to consider the expenses of running the business which includes providing the students with boarding, lodging and transportation facilities and the earnings from the business are barely sufficient to maintain herself and her two children, whom she is solely supporting. It is further contended that the financial condition of the petitioner has been ignored by the trial court. Counsel next submits that in fact the financial condition of the petitioner would be evident from the fact that petitioner is residing in a rented accommodation and is paying rent @ ₹12,500/-, per month. Mr.Sharma submits that trial court has completely lost sight of the fact that petitioner has to maintain and provide for two unmarried children – one son, who is 26 years of age, and a daughter, who is 24 years of age. Counsel next submits that petitioner has to not only provide for their maintenance but also plan their marriages and ensure a secured future for the children. Besides petitioner has to look after herself. It is further submitted that petitioner is medically unfit and is suffering from Leucoderma and arthritis and she has to spend on doctors, medicines and other tests. Copies of medical prescriptions have been placed on record in support of her contention.

3. Learned counsel for the petitioner submits that even otherwise the respondent is an able bodied person and he is in a position to maintain himself. Counsel further submits that respondent is

carrying on a business in the name and style of Sethi Contractor and accordingly the respondent is not entitled to any maintenance. A copy of the visiting card of Sethi Contractor has been placed on record. Stress has also been laid by counsel for the petitioner on the conduct and character of the respondent. Various instances have been cited in the present petition by the petitioner to show that respondent has an immoral character. It is also contended that learned trial court has relied purely on the guess work to assess the income of the petitioner and, thus, the impugned order is liable to be set aside.

4. Learned counsel for the petitioner submits that petitioner has subsequently been able to lay her hands on documents to show that respondent is earning and is able to maintain himself, however, the documents were neither filed along with this petition nor the same were filed before the trial court at the relevant time. However, it is submitted by counsel for the petitioner that an application has already been moved before the trial court for modification of the impugned order and the petitioner will rely upon those documents before the trial court.
5. Learned counsel for the respondent submits that despite the fact that the business was set up by the respondent and the petitioner together initially, out of the funds received from selling ancestral property of the respondent, and the business is making a good profit, the trial court has been extremely conservative in granting

only ₹20,000/-, per month, as maintenance, for the respondent. Counsel further submits that in the affidavit filed by the respondent on 20.1.2009 before the trial court, the respondent has enlisted the assets of the business, which are reproduced below:

(a)	300 room on rent fully equipped and furnished with double bed	18000x300.00
(b)	Taa Bus 1.50 Seaters	54 lacs
(c)	One Tata Winger (9+1)	8 lacs
(d)	Three Maruti Vans	6 lacs
(e)	One Maruti Zen	3 lacs
(f)	One Accent Viva Car	4 lacs
(g)	One Mess kitchen Modular with all apparatus, uttencils, equipments, etc. sufficient for 600 inmates along with all other required faculties	8 lacs
(h)	One Modern Zim with all equipments	2 lacs
(i)	One General Store with stock	2 lacs
(j)	One Cyber Café with four computers and other necessary equipments	1 ½ lacs
(k)	House-hold articles including laptop, Fridge, Air Conditioners (3), Two LCD TVs, etc. Three bed rooms fully equipped with one drawing room and kitchen with jewellery articles common family ornaments, ancestral, etc.	20 lacs

6. It is submitted by counsel for the respondent that a perusal of the abovementioned assets of the business would show that petitioner is running a flourishing business. It is further submitted that the assets of the business, business investments and other personal assets owned by the petitioner would give some idea of the status of the petitioner. It is next submitted that petitioner had filed an additional affidavit before the trial court where she had herself admitted that she is running business in the name and style of Paradise Hostel for the purposes of which she has taken 81 flats in

two societies on rent, for which she is paying ₹5,07,000/- as rent; ₹65,800/- as maintenance + electricity and other expenses towards hostel, bus payments, etc. Petitioner has also admitted in the additional affidavit that she is paying ₹25,000/-, per month, towards house keeping; ₹48,000/-, per month, towards kitchen expenses; ₹50,000/- towards the salary of drivers, electrician, plumbers, etc; ₹2,50,000/-, per month, towards Hostel's Ration, Grocery Expenditure, for a strength of 386 students.

7. Learned counsel for the respondent submits that respondent was unceremoniously thrown out of his house and it is only by the order of the court that few articles were returned, which have been noticed by the trial court in para 12 of its order. Relevant portion of which reads as under:

“... an application in the Court for taking his clothes and chapels lying at the house of the non applicant and the non applicant has given only two pairs of pants and shirts, one kurta pajama, three bainyans, two underwears and one pair of chappals and two sweaters in the court on 21.1.2009 and other articles of the applicant mentioned in his application have not yet been given by the non-applicant/ wife.”

8. It is next submitted that the respondent tried setting up another business and starting life afresh. However, the business was unsuccessful and the partnership which was entered into for the purpose of business was dissolved on 1.12.2009. The respondent has placed a copy of the dissolution of partnership deed dated 1.12.2009 in support of his contention. Counsel further submits that there is no infirmity in the order of the trial court, which would

call for interference in the proceedings under Article 227 of the Constitution of India.

9. I have heard counsel for the parties, who have also drawn the attention of the Court to various documents placed on record as also the affidavits filed by both the parties before the trial court. In this case, the undisputed facts, which emerge, are that marriage between parties was solemnized on 6.12.1982. A son, who is at present 26 years of age, and a daughter, who is at present 24 years, were born out of their wedlock. Admittedly, the parties started residing separately since September, 2006, and thereafter with the intervention of friends and relations, the petitioner and respondent stayed together for a brief period in the matrimonial home, however, the parties again separated on 6.9.2008. Allegation of the respondent is that he was thrown out of the matrimonial home, which *prima facie* appears to be correct as few of his articles were handed over to him on 20.1.2009 in the Court, as observed by the trial court.
10. It is settled position of law that the law makes provision to strike a balance between the standard of living, status and luxuries that were enjoyed by a spouse in the matrimonial home and after separation. It has been held by the Apex Court that the needs of the parties, capacity to pay etc. must be taken into account while deciding quantum of maintenance.

11. In the case of **Jasbir Kaur Sehgal (Smt.) v. District Judge, Dehradun & Others**, reported at (1997) 7 Supreme Court Cases 7, it has been held as under:

“8. *The wife has no fixed abode of residence. She says she is living in a Gurudwara with her eldest daughter for safety. On the other hand the husband has sufficient income and a house to himself. The Wife has not claimed any litigation expenses in this appeal. She is aggrieved only because of the paltry amount of maintenance fixed by the courts. No set formula can be laid for fixing the amount of maintenance. It has, in the very nature of things, to depend on the facts and circumstance of each case. Some scope for liveness can, however, be always there. Court has to consider the status of the parties, their respective needs, capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate. In the circumstances of the present case we fix maintenance pendente lite at the rate of Rs.5,000/- per month payable by respondent-husband to the appellant-wife.*”

12. A Single Judge of this Court in the case of **Bharat Hegde v. Saroj Hegde**, reported at 140 (2007) DLT 16, had culled out following 11 factors, which can be taken into consideration for deciding the application under Section 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 under Section 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 under Section 125, Cr.P.C. is adjustable against the amount awarded under Section 24 of the Act.

13. The Supreme Court of India in the case of **Jasbir Kaur (Smt.)** (supra), has also recognized the fact that spouses in the proceedings for maintenance do not truthfully disclose their true income and therefore some guess work on the part of the Court is permissible. Further the Supreme Court has also observed that *"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"*.

14. Further in a recent decision the Apex Court in **Neeta Rakesh Jain v. Rakesh Jeetmal Jain** reported at AIR 2010 SC 3540, has laid guidelines which the courts may keep in mind at the time of fixing the quantum of maintenance.

“In other words, in the matter of making an order for interim maintenance, the discretion of the court must be guided by the criterion provided in the Section, namely, the means of the parties and also after taking into account incidental and other relevant factors like social status; the background from which both the parties come from and the economical dependence of the petitioner. Since an order for interim maintenance by its very nature is temporary, a detailed and elaborate exercise by the court may not be necessary, but, at the same time, the court has got to take all the relevant factors into account and arrive at a proper amount having regard to the factors which are mentioned in the statute”.

15. While, in this case, petitioner has placed copies of income tax returns for the assessment years 2007-2008 on record, a copy of balance sheet as on 31.3.2007 as also a copy of Profit and Loss Account for the year ended as on 31.3.2007, have also been placed on record. The Profit and Loss Account of the guest house of the petitioner reads as under:

“PARADISE PG HOUSE
PROP. MRS. RANI SETHI
B-75, DUGGAL COLONY
KHANPUR, NEW DELHI – 110062

PROFIT & LOSS ACCOUNT FOR THE YEAR ENDED ON 31.03.2007

<u>PARTICULARS</u>	<u>AMOUNT</u>	<u>PARICULARS</u>	<u>AMOUNT</u>
To Establishment	695900.00	By Receipts	8380178.00
To Rent for Flats	3191660.00		
" Mess Expenses	1521958.00		
" Electricity & Water	295800.00		
" Bank Charges	39870.63		
" Staff Welfare	51270.00		
" Transportation	478756.00		
" Telephone Expenses	229234.00		
" Vehicle Running & Maintenance	252859.93		
" Hire Charges	121000.00		

" Bedsheets & Lined	152540.00		
" Medicines & Doctor's Fee	24128.00		
" Printing & Stationery	42190.00		
" Travelling & Conveyance	44262.00		
" Insurance	15078.00		
" Misc. Expenses	37383.00		
" Security Expenses	164500.00		
" Repair & Maintenance	286856.00		
" Interest on Car Loan Amount Written Off	24571.72		
" Amount written Off			
" Audit Fee	23697.00		
" Depreciation	16200.00		
" Net Profit transferred to Capital	191222.07		
	8380178.00		8380178.00

16. A perusal of the Profit and Loss Account shows that this business is incurring a profit of ₹83,80178/- for the year ending on 31.3.2007.

17. The affidavits filed by both the petitioner and the respondent before the trial court also unfold the details of the business, which was initially being carried out by both the petitioner and the respondent and subsequently admittedly by the wife along.

Relevant portion of the affidavit of the respondent reads as under:

"Affidavit of Sunil Sethi s/o late J.N. Sethi R/o A-43, Street No.10, Madhu Vihar, I.P. Extension, Delhi-110092 (however presently without any accommodation).

I the above-named deponent do hereby solemnly affirm on oath and state as under:-

1. *I say that being petitioner in the above mentioned case, I am entitled to swear the present affidavit.*
2. *I say that the respondent is proprietor of M/s Paradise P.G. House Informative Society, Sector-VI, Greater Noida, (U.P.).*
3. *That the said firm established by me and started with the capital investment of Rs.8,00,000/- in the year of 2003 which I had got from my share in my ancestral/parental property.*
4. *I say that the total asset of the said firm owned by the respondent is about Rs.1,00,000/- approximately. This assessment is dated 05.09.08 when I forced to leave the business.*
5. *I say that asset of the respondent's firm as on 05.09.08 were as under:-*

S. Particulars

Approx.

No.		value (in Rs.)
1.	300 room on rent fully equipped and furnished with double bed	18000x300.00 54 lacs
2.	Tata Bus 1.50 Seaters	17 lacs
3.	One Tata Winger (9+1 seater)	8 lacs
4.	Three Maruti Vans	6 Lacs
5.	One Maruti Zen	3 Lacs
6.	One Accent Viva Car	4 lacs
7.	One Mess Kitchen Modular with all apparatus, utensil, equipments etc. sufficient for 600 inmates along with all other required facilities	8 lacs
8.	One Modern Zim with all equipments	2 lacs
9.	On General Store with stock	2 lacs
10.	One Cyber Cafe with four computers and other necessary equipments	1 ½ lacs
11.	House-hold articles including Laptop, Fridge, Air Conditions (3), Two LCD TVs etc. Three bed rooms fully equipped with one drawing room and kitchen with jewellery articles common family ornaments, ancestral etc.	20 lacs

6. I say that on 05.05.08, the liability over the firm namely M/s Paradise was namely Rs.15,00,000/- approx."

18. The petitioner herein also filed her affidavit before the trial court.

Affidavit of petitioner reads as under:

"I, Rani Sethi w/o Mr. Sunil Sethi r/o Rajdhani Nikunj, Plot no.94, I.P. Extension, Patparganj, Delhi do hereby solemnly affirm on and declare as under:

A.

B. That following are the details of the monthly expenditure incurred by me in my business of running Paradise Hostel.

i. That I have hired on rent 50 and 31 flats respectively in two societies namely informatics and Khushboo whose details are as follows:

	Rent of Flats	Maintenance	Electricity Bills
Informatics	Rs.2,59,000/-	Rs.34,800/-	+Electivity Bills
Khusboo	Rs.2,48,000/-	Rs.31,000/-	+Electivity Bills

Total Rent	Rs.5,07,000/-	Rs.65,800/-	+Electivity Bills
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C. That the expenditure incurred and the monthly installments due for the following are as under:

Hotel Bus	EMI-22,216/- PER per month + 9 Lakh invested in Bus down payment.
Winger's	EMI-10,450/- per month + 2,60,000/- down payment
Viva's	EMI-10209/- per month
Zen's	EMI-10,540/- per month
Van's	EMI-17,365/- per month
Total	EMI-71,365/- per month

D. Staff Salary – Home Keeping 25,000/- per month
Kitchen 48,000/- per month
Drivers and electrician

Total Salary of Staff 1,23,000/- per month

Hostel's Ration + Grocery Exp.+ Snacks item etc. 2,50,000/- per month
for 386 strength of students

Maintenance Exp.	30,000/- per month
Diesel for Bus	25,000/- per month
Diesel for Generator- Informatics	38,800/- per month
Khushboo	19,400/- per month
House rent	12,500/- per month
House Maintenance	15,000/- per month+Electricity bill
Transport charge of hostel	27,000/- per month
Three buses on hire	

E. That it is also submitted that session starts in August of every month."

19. Taking into consideration the documents, which have been filed on record of this court and the affidavit of the petitioner, the balance sheet, the Profit and Loss Account of the guest house and the income and expenditure of the guest house, it is clear that the

petitioner has a substantial income from the business, which was at one time started jointly by both the petitioner and the respondent. The purpose of section 24 of Hindu Marriage Act is to provide support to a spouse who has no independent source of income and is incapable of maintaining himself/herself. It is trite law that the term '*support*' is not to be construed in a narrow manner so as to mean bare subsistence. It means that the other spouse, who has no independent source of income, is provided with such maintenance so as to live in a similar status as was enjoyed by them in their matrimonial home. It is the purpose of section 24 that the wife or the husband who has no sufficient source of income for her or his support or for the expenses of the proceedings must be provided with such reasonable sum that strikes equity between the spouses.

20. Taking into consideration the facts of this case and the settled position of law, I am of the view that learned trial court has correctly considered the relevant factors and has also rightly relied upon the judgments of this court as also the Apex Court. I find no infirmity in the order dated 24.2.2009, which requires interference by this court in the proceedings under Article 227 of the Constitution of India. Accordingly, present petition is without any merit and the same is dismissed.

21. Interim order dated 4.3.2009 stands vacated. All arrears shall be cleared by the petitioner within a period of three months from today, which shall be paid by the petitioner to the respondent in

equal installments and the first installment shall be paid by the petitioner within 15 days from today.

CM NO.3129/2009 (STAY).

22. Application stands dismissed in view of the orders passed in the petition.

March 31, 2011
'msr'

G.S. SISTANI, J.