

IN THE HIGH COURT OF DELHI AT NEW DELHI

CM(M) No.40/2005

Sh. Bharat Hegde Petitioner
! through: Mr.K.N.Bhatt, Senior Advocate with
Mr.Sanjay Sahrawat, Advocate

VERSUS

\$ Smt. Saroj Hegde Respondent
^ through: Mr.S.K.Dubey, Advocate &
Mr.Tarun Kamboj, Advocate

RESERVED ON : 18-04-2007

% DATE OF DECISION: 24-04-2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

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

: **PRADEEP NANDRAJOG, J.**

1. I do not intend to catalog the various decisions under Section 24 of the Hindu Marriage Act 1955. It would be sufficient for me to note the judicial principles required to be applied while deciding an application under Section 24 of the Hindu Marriage Act 1955.

2. Since the Section relates to entitlement of the

appellant spouse to receive interim maintenance from the non-applicant spouse, it is obvious that the focus of enquiry has to be the means of the applicant spouse to maintain him/her self as also the financial means of the non-applicant spouse. The issue of conduct or misconduct of either spouse is irrelevant for the reason, in every proceedings for divorce, dissolution or judicial separation, there is bound to be some allegations or the other pertaining to matrimonial misconduct. Thus, if conduct or misconduct were to be considered, no spouse would get any interim maintenance under Section 24.

3. The Section contemplates a summary enquiry and not a trial at length.

4. Right to maintenance is an incident of the status from an estate of matrimony. Interim maintenance has an element of alimony, which expression in its strict sense means allowance due to wife from husband on separation. It has its basis in social conditions in United Kingdoms under which a married woman was economically dependent and almost in a position of tutelage to the husband and was intended to secure justice to her.

5. Section 24 of the Hindu Marriage Act goes a step further inasmuch as it permits maintenance to be claimed by

the husband even against the wife.

6. While considering a claim for interim maintenance, the court has to keep in mind the status of the parties, reasonable wants of the applicant, the income and property of the applicant. Conversely, requirements of the non applicant, the income and property of the non applicant and additionally the other family members to be maintained by the non applicant have to be taken into all. Whilst it is important to insure that the maintenance awarded to the applicant is sufficient to enable the applicant to live in somewhat the same degree of comfort as in the matrimonial home, but it should not be so exorbitant that the non applicant is unable to pay.

7. Maintenance awarded cannot be punitive. It should aid the applicant to live in a similar life style she/he enjoyed in the matrimonial home. It should not expose the non applicant to unjust contempt or other coercive proceedings. On the other hand, maintenance should not be so low so as to make the order meaningless.

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 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 u/s. 125 Cr.PC is adjustable against the amount awarded u/s. 24 of the Act.”

9. With the backdrop facts aforesaid validity of the impugned order dated 13.5.2004 has to be decided.

10. The non-applicant Smt.Saroj Hegde sought dissolution of her marriage on grounds of cruelty and desertion. She filed a an application under Section 24 of the Hindu Marriage Act praying that she should be awarded a reasonable interim maintenance from her husband. She stated that she was unemployed.

11. In support of her claim, she pleaded that her husband was the son of Shri Rama Krishna Hegde, Ex Chief Minister of the State of Karnataka. She stated that he was an industrialist operating a unit at Peeneya Industrial Estate, Stage-II, Bangalore wherefrom he was earning at least Rs.10 lacs per month. She further stated that the husband was a co-owner in the following properties:-

1. Property No.229, Raj Mahal Vilas Extension, Bangalore valued Rs.6 crores.
2. Fionika Building, Walkeshwar Road, 12th Floor, Bombay valued Rs.4 crores.
3. Ancestral property at Sidapur, Mytri valued Rs.1 crore.
4. Peeneya Industrial Estate, II Stage, Bangalore valued

Rs.50 lakhs.

5. Flat at Ferozshah Road, New Delhi valued Rs.2 crores.

6. Coffee Gardens at Coorg, Karnataka valued Rs.10 crores.

7. 40 acres of agricultural farm land near Jai Nagar valued Rs.5 crores.

12. A verments in respect of the immovable properties owned by the husband are in para 7 of the application filed by the wife under Section 24 of the Hindu Marriage Act. The same read as under:-

	<u>PROPERTIES</u>	<u>VALUE</u>
i)	Property No.229, Raj Mahal Vilas Extension, Bangalore-560006	Rs.6 crores
ii)	Fionika Building, Walkeshwar Road, 12th floor, Bombay.	Rs.4 crores
iii)	Ancestral property at Sidhpur, Mytri (co-owner)	Rs.1 crore
iv)	Peeneya Industrial Estate, II Stage, Bangalore	Rs.50 lacs
v)	Flat at Ferozshah Road, New Delhi	Rs.2 crores
vi)	Coffee Gardens at Coorg.	Rs.10 crores
vii)	Agricultural farm land (40 acres) near Jai Nagar	Rs.5 crores

13. Response of the husband to the averments made in para 7 are as under:-

“7. The respondent respectfully submits that, the respondent is unemployed and he has no source of income and that he is totally dependent on his parents.”

14. It may be noted at the outset that the husband has

not denied the assertion that he is the owner of the properties disclosed in para 7 of the application filed by the wife under Section 24 of the Hindu Marriage Act.

15. By and under the impugned order, Rs.25,000/- per month has been awarded to the wife besides litigation expenses in sum of Rs.25,000/-.

16. Shri K.N.Bhatt, learned senior counsel for the petitioner urged that while awarding maintenance to the respondent, learned Judge had to consider only the revenue income of the husband. Consideration of capital assets may be relevant in a claim for permanent alimony, urged the counsel. It is wholly irrelevant for purposes of deciding a claim under Section 24, submitted the learned senior counsel.

17. I do not agree.

18. If the capital asset is an industrial property, a coffee plantation, an orchard or any other agricultural holding, there would be a presumption that the said capital asset is yielding some income. It is not presumed to be a dead asset.

19. As noted herein above, unfortunately, nobody pays proper taxes to the Government. Self employed persons seldom disclose their true income. Prudence and worldly wisdom gained by a judge before whom citizens of all stratas of

society litigate it can always be used by a Judge to broadly ascertain as to what is going on in the society. By no means, said knowledge can be used where law requires a fact to be conclusively proved. But where the law requires a Judge to form an opinion based on a host of primary data, a Judge can formulate an opinion pertaining to the likely income from the capital assets of the husband.

20. The matter can be viewed differently.

21. It is not the case of the husband that he has abandoned his capital assets. It is not his case that he is not residing in Raj Mahal Vilas Extension, Bangalore.

22. How is he maintaining the said properties?

23. The husband has disclosed nothing about the salaries paid to the various employees, servants and others employed at the various capital assets owned/co-owned by the husband.

24. It is a well recognized principle of law that where a person withholds vital information, a presumption arises against him that had he disclosed the information, the same would have been adverse to him.

25. Keeping in view the capital assets owned/co-owned by the husband, his social status, his place of residence, it is

difficult to believe that the husband does not have the requisite means to support his wife a monthly maintenance of Rs.25,000/-.

26. As regards the wife, there is no proof of she having any income.

27. Order sheets of the present case show numerous attempts made to effect a reconciliation or separation on amicable terms. Unfortunately, the attempts have failed.

28. I find no merit in the petition.

29. Dismissed.

30. The husband is directed to pay costs of the present litigation before this Court to the wife quantified at Rs.25,000/-.

31. No costs.

April 24, 2007
dk

(PRADEEP NANDRAJOG)
JUDGE