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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgement Pronounced On: 4th July 2018

+ **MAT.APP.(F.C) 143/2018**

NEETU BARUA

.....Appellant

Through:

Mr. Zartab Anwar , Advocate.

versus

MANAS BARUA

.....Respondent

Through:

None.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J. (Oral)

CM No. 27161/18 (Delay in Filing)

1. The present application is filed for seeking condonation of delay of 6 days in filing the present appeal.
2. For the reasons stated in the present application the same is allowed.
3. Application disposed of.

MAT.APP.(F.C) 143/2018

1. In the present appeal filed under Section 19 of the Family Courts Act, 1984, the appellant/wife is aggrieved by an order dated 27.01.2018 (hereinafter the 'Impugned Order') whereby the applications filed by her under Section 24 of the Hindu Marriage Act 1955 (hereinafter referred to as 'HMA') were dismissed by the Family Court South East Saket, New Delhi,

whilst holding that the appellant/wife is concealing her true income from the Court and is otherwise able to maintain herself.

2. Brief background of the present appeal is that a petition had been filed by the respondent/ husband under Section 13(1)(ia) of the HMA seeking a decree of divorce against the appellant/wife. The reply to the said application filed by the appellant/wife was accompanied by an application under Section 24 of the HMA seeking maintenance pendente lite from the respondent/husband. Another petition has been filed under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') by the wife/appellant seeking maintenance from her husband/respondent alongwith an application seeking interim maintenance. The said two applications filed by the appellant/wife for interim maintenance were disposed of by the common order dated 27.01.2018 passed by the Trial Court, impugned before this Court in the present appeal.
3. Mr. Anwar, learned Counsel for the appellant submits that the Trial Court while passing the impugned order erred in not appreciating the salary certificate issued by the Raisana Bengali School which categorically states the salary earned by the appellant/wife in the capacity of an ad-hoc teacher and that the same amount has been mentioned by the appellant/wife in all other proceedings, which is further confirmed by her bank statements; that reliance placed by the Trial Court on the

advertisement of Raisana Bengali School regarding the vacancy of TGT and PGT teachers and on the Notification of the Government of Delhi with respect to the minimum wages is wholly unsustainable; that the Trial Court did not correctly appreciate the bank account entries of Rs. 1,50,000/- and Rs. 1,40,000/- which correspond to the gold loan taken by the appellant and the amount borrowed from her brother on the demands of the respondent/husband respectively; that though the appellant/wife is residing in her in-laws house, however the mother-in-law of the appellant has already filed a suit for eviction against her and the same is sub judice before the Trial Court; that while the appellant/wife is drawing a salary of Rs.9,700/- per month, the respondent/husband is drawing a minimum salary of Rs.1,09,667/- per month and that the appellant/wife and her son are completely dependent on the parents of the appellant/wife and hence seeking interim maintenance from the respondent/husband.

4. We have heard the learned counsel and perused the material available on record.
5. Before this Court, the unrebutted fact is that the appellant/wife and her son continues to reside in her matrimonial home alongwith her mother-in-law. On the other hand, the respondent/husband is residing in a rented accommodation. Besides, the respondent/husband also bears the education and other expenses of their son, whereas the appellant/wife who is

engaged as an ad-hoc teacher in Raisana Bengali School is receiving salary therefrom and has no other liability as such.

6. However the controversy which surrounds the issue in the present appeal is with regard to the actual income of the appellant/wife. As per the income affidavits submitted by the appellant/wife, she earns a monthly income of Rs.9700/- per month in the capacity of an ad-hoc teacher in Raisana Bengali School where she has been employed from past 10 years. The said fact has been objected by the respondent/husband who has reasons to believe that the appellant/wife cannot be expected to earn salary as stated by her in the income affidavit as she has been working in the same School from the past 10 years and in view of the Notification of the Delhi Government, even the minimum wages so prescribed are more than what is earned by the appellant/wife. Even otherwise the Trial Court has scrutinised other bank records and account statements of the appellant/wife and has observed *inter-alia* that the appellant/wife has in the recent past closed her two bank accounts and has also not furnished the entire statement of accounts. The appellant/wife has not been able to adduce a satisfactory explanation with regard to certain deposit entries in her account statements, nor has she disclosed about the locker facilities availed by her in the income affidavit furnished before the Court.

7. On a perusal of the applications, reply as well as the income affidavits, and other documents filed on record by both the parties, the Trial Court came *inter alia* to the following finding:-

"On the other hand, counsel for the applicant/wife has not been able to point out anything in the income affidavit or in the documents filed on record by the applicant/wife or non-applicant/husband that she is not residing in the matrimonial house alongwith her mother-in-law and son and the non-applicant/husband is not residing in a rented accommodation. She has no rent, electricity or water to pay. All the expenses of the child are being borne by the non-applicant/husband till date. Not only this, it seems that the applicant/wife is clearly trying to conceal her true income from the court. It is well settled principle of law that those seeking equity should come to the court with clean hands. During these days it has become a routine practice that none of the parties disclose their true income from the court and the applicant/wife in the present case is no exception to this Rule.

Keeping in view the aforesaid facts and circumstances, both the aforesaid applications, i.e. application under Section 24 of the HMA (filed in HMA No.139/17) and the application for grant of interim maintenance (filed in M.04/17) filed by the applicant/wife are dismissed. However, nothing stated herein shall tantamount to an expression on the merits of the case."

8. The observations adduced hereinbefore leads us to the only conclusion that there is no infirmity in the impugned order whereby the Trial Court has struck a clear balance between the ability of the appellant/wife to maintain herself and the extent of

liability on her shoulders, and has dismissed the subject applications for interim maintenance. Section 24 of the HMA is not meant for equivalising the income of wife with that of husband but to grant relief only in favour of a spouse who has no independent source of income for his or her support. Hence we are of the view that the appeal being bereft of merit is liable to be dismissed.

9. Ordered accordingly.

C.M. No. 27162/18 (Stay)

1. In view of the orders passed in the appeal, present application is rendered infructuous.
2. Application stands disposed of.

SANGITA DHINGRA SEHGAL, J.

G.S.SISTANI, J.

JULY 04, 2018

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