

HIGH COURT OF DELHI

CORAM: HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE AMIT BANSAL

Date of Decision: March 28, 2024,

MAT.APP.(F.C.) 87/2019 & C.M. Nos. 13356/2019, 407/2020, 3144/2023,
42129/2023, 50290/2023, 50354/2023, 50361/2023, 50363/2023

SANJAY KUMAR BARANWAL Appellant

Versus

BHAVNA KUMARI Respondent

MAT.APP. (F.C.) 159/2019 & C.M. No. APPL. 27111/2019

BHAVNA KUMARI Appellant

versus

SANJAY KUMAR BARANWAL Respondent

Legislation:

Section 24 of the Hindu Marriage Act, 1956

Subject: Appeals arising from an order of interim maintenance under Section 24 of the Hindu Marriage Act, 1956 in the context of a divorce petition, with issues concerning modification based on changed circumstances including the financial status of the parties and the adult child.

Headnotes:

Modification of interim maintenance under Section 24 of the Hindu Marriage Act, 1956 - Original order directed the Husband to pay Rs.66,000/- per month cumulatively to Wife and daughters following a divorce petition - Husband seeks modification citing elder daughter's majority and employment in the USA, reduction in his salary, and personal financial constraints, including increased rent and medical expenses - Wife opposes, highlighting her lack of independent income, health issues, and children's needs - Court's examination of Husband's financial records from 2018 and 2022 reveals minor salary variation and significant future savings, undermining his claims of reduced financial capacity - The Court modifies

maintenance to Rs.44,000/- per month from July 2023, considering elder daughter's employment - Directs clearance of arrears within four weeks and urges Family Court for expeditious conclusion of divorce proceedings.

Referred Cases: none.

Representing Advocates:

Mr. Hargovind Jha for Sanjay Kumar Baranwal

Mr. Rajnish Ranjan and Mr Shivansh Srivastava for Bhavna Kumari

AMIT BANSAL, J.:

1. Both the appeals arise out of the same impugned order.
2. MAT.APP. (F.C.) 87/2019, has been filed by Mr Sanjay Kumar Baranwal ('Husband') seeking setting aside/modification of the impugned order dated 29th January, 2019, passed by the learned Judge, Family Courts, Dwarka, New Delhi ('Family Court') whereby the application filed by the Mrs Bhavna Kumari ('Wife') under Section 24 of Hindu Marriage Act, 1956 ('HMA') was disposed of, directing the Husband to pay a cumulative sum of Rs.66,000/- per month (*Rs.22,000/- each to the Wife and the two daughters*) as *pendente lite* maintenance, until the disposal of the divorce petition filed by the Husband under Sections 13(1)(ia) of the HMA.
3. MAT.APP. (F.C.) 159/2019, has been filed by the Wife seeking enhancement of the interim maintenance from Rs.66,000/- per month to a sum of Rs.1,25,000/- per month.
4. Briefly stated, the facts of the case are set out hereinafter. The parties got married on 8th March 2000, as per Hindu rites and ceremonies. Two children were born from the said wedlock on 13th March 2001 and 15th April 2006 respectively. Disputes arose between the parties in March 2018, which resulted in multiple rounds of litigation.
5. The present petition arises from a petition filed by the Husband seeking dissolution of marriage under Section 13(1)(ia) of the HMA, before the Family Court. During the pendency of the divorce petition, the Wife moved an application under Section 24 of HMA, seeking interim maintenance at the rate of Rs.1,25,000/- per month.

6. By way of the impugned order, the Family Court assessed the monthly disposable income of the Husband in the range of Rs. Rs.1,10,000/- per month and directed the Husband to pay a cumulative sum of Rs.66,000/- per month as interim maintenance, Rs.22,000/- each, to the Wife and the two daughters. The operative portion of the order passed by the Family Court has been set out below:

“18 The petitioner has no other liability except to maintain himself as well as his wife and both the children. Thus, entire disposable income of the petitioner of Rs. 1,10,000 is required to be divided into 5 equal shares. Out of which one share is required to be given to respondent / wife Bhavna Kumari, one share to his daughter Ms. Sanhita Kumari, one share to his son Master (SIC) Shreya Sargam, one share to the petitioner and one additional share to the petitioner for his day to day needs and expenses. Thus, respondent is entitled to receive a total sum of Rs.66,000/- per month towards pendente lite maintenance from the petitioner.

19 In view of the above facts and circumstances, the application filed by the respondent is allowed. The petitioner is directed to pay a sum of Rs.66,000/- per month as pendente lite maintenance to the respondent from the date of filing of application till the disposal of petition.

The petitioner shall make the payment of arrear of maintenance within a period of three months from today. Any amount paid by the petitioner to the respondent as maintenance under the order of any court or otherwise shall be adjusted against the arrears. The application is accordingly disposed of.”

7. Assailing the impugned order passed by the Family Court, both parties have approached this Court by way of the present appeals.
8. In the appeal filed by the Husband, the predecessor bench passed a detailed order dated 9th May, 2019, directing the Husband to pay a sum of Rs.66,000/- per month to the Wife including the school fees of the children and also directed him to clear arrears of maintenance awarded by the Family Court within 6 weeks. Further, the parties were referred to mediation. However, the mediation was not successful.

9. Subsequently, the Husband filed an application, C.M. No. APPL.3144/2023, seeking modification of the impugned order based on change in circumstances.
10. Broadly, the Husband seeks modification of the impugned order on the following grounds:
 - I. The elder daughter has attained majority in the year 2019. She has started working in the USA and has been earning substantial amounts since April 2020. Therefore, there is no requirement to pay any maintenance *qua* her.
 - II. The Husband who is employed at Tata Consultancy Services, has experienced a reduction in salary since August 2021.
 - III. The Wife is residing in the matrimonial house whereas the Husband is residing in a separate rented accommodation and the rental has increased over a period of time.
 - IV. The Husband is suffering from various medical ailments and depression.
 - V. The Wife is well qualified to make her own living rather than depending upon the Husband.

11. In the reply filed on behalf of the Wife, it has been stated as under:

- I. The elder daughter has recently graduated after completing her 4-year degree in May 2023 and has started earning only thereafter.
- II. As per the salary slip filed by the Husband, his annual income in December 2018 was Rs.23,14,281/- and the same has increased to Rs.24,29,322/- in November 2022. Therefore, it is wrong to state that his salary has reduced.
- III. Apart from the matrimonial house, which is in the occupation of the Wife, the Husband also owns various other properties from which he is drawing rental income.
- IV. The Wife is not keeping well and has been advised knee surgery due to degenerative changes in the knee joint. Further, the younger daughter was diagnosed with Slipped Capital Femoral Epiphysis wherein the Wife had spent about Rs.1,31,390/- for the treatment.
- V. The younger daughter is studying in Class XII and the Wife is meeting the educational expenses of the younger daughter with the help of financial support from her brothers.

12. We have heard the counsels for the parties and examined the material on record.

13. Counsel appearing on behalf of the Wife candidly admits that after completion of the 4-year degree i.e., Bachelor of Computer Science in

Software Engineering and Cyber Security from a USA university, the elder daughter has secured a job in the USA with effect from July 2023. Therefore, there need not be any maintenance towards her after July 2023.

14. As regards the submission of the Husband that the elder daughter had started earning since April 2020, it is an admitted position that the elder daughter completed her engineering degree in May 2023. Even if, some amounts were earned by the elder daughter before graduation, it would only be a minimal amount to meet her living expenses. Therefore, we are unable to accept the aforesaid submission made on behalf of the Husband.

15. Next, it is further contended on behalf of the Husband that his salary has seen a reduction since August 2021.

16. As per the latest salary slip for the month of November 2022, placed on record before this Court, the Husband is drawing a gross monthly salary of Rs.1,79,792/-. This figure includes Rs.27,550/- towards the House Rent Allowance, besides other allowances. Out of the aforesaid amount, a sum of Rs.32,799/- is deducted towards Income Tax and further sums of Rs.6,936/-, Rs.5,780/- and Rs.5,510/- are deducted towards Provident Fund, Voluntarily Provident Fund and NPS ('National Pension System') respectively. After the aforesaid deductions, the net monthly pay of the Husband is Rs.1,28,757/-.

17. In comparison, as per the salary slip for the month of December 2018, placed before the Family Court, the Husband was drawing a gross monthly salary of Rs.1,84,938/- which is not significantly different from the salary drawn in November 2022. However, the net monthly pay that the Husband was receiving in December 2018 (i.e., Rs.1,41,807/-), was slightly more than the net monthly pay for the month of November 2022 (i.e., Rs.1,28,757/-) since the net amounts deducted towards saving were lesser in December 2018. The record reveals that the Husband is securing his future by contributing towards the Provident Fund, Voluntarily Provident Fund and NPS. On the contrary, the Wife has no independent source of income, as recorded in the impugned order passed by the Family Court.

18. Therefore, the submission of the Husband that he is financially worse off now than the period when the impugned order was passed is unmerited.

19. In view of the discussion above and taking into account that the elder daughter of the parties has started earning with effect from July 2023, we are of the view that the interim maintenance payable by the Husband should thus, be reduced from Rs.66,000/- to Rs.44,000/- per month with effect from July 2023. It is ordered accordingly.

20. Subject to the aforesaid modification, the impugned order is sustained. 21. Accordingly, both the appeals along with pending applications stand disposed of.

22. Arrears of maintenance, if any, shall be cleared by the Husband within four weeks from the date of this judgment.

23. Taking into account the divorce was filed by the Husband as far back in 2018, the Family Court shall endeavour to expeditiously decide the same.

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