

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

+ **CM(M) No.1045/2008 & CM No.13003/2008**

Date of Decision : July 02, 2010

SMT. SUSHILA DEVI Petitioner
Through: Mr.K.Sunil, Advocate
with Petitioner in person.
versus

SHRI JOGINDER KUMAR Respondent
Through: Mr.Saurabh Tiwari,
Advocate with Respondent
in person.

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CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

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| (1) | Whether reporters of local paper may be allowed to see the judgment? | |
| (2) | To be referred to the reporter or not? | Yes |
| (3) | Whether the judgment should be reported in the Digest ? | Yes |

J U D G M E N T

ARUNA SURESH, J.

1. Impugned in this petition is the order of the Trial Court dated 8th August 2008, whereby while allowing application of the petitioner (respondent in the main petition) filed under Section 24 of the Hindu Marriage Act (hereinafter referred to as 'the Act'), it awarded her maintenance @ Rs.3,000/-per month, besides litigation

expenses of Rs.5,100/-. Being dissatisfied by the said order, she has filed this petition.

2. Mr.K. Sunil, counsel appearing on behalf of the petitioner has submitted that the court awarded meagre amount of maintenance without considering income of the respondent (petitioner in the main petition) in the correct perspective as he is a man of means and therefore, she should have been awarded maintenance as claimed by her i.e. at least Rs.8,000/- to Rs.10,000/- per month. He further submitted that respondent-husband owns agricultural land measuring 12 *Bighas* and 17 *Biswas* in village Nizampur, Delhi and the total annual income of the parents of the petitioner is about Rs.8,60,000/-. Besides, he owns two residential houses in the name of his father in old Lal Dora Mundaka, in which there is a godown and a factory and he has income from the said business.

3. Mr.Saurabh Tiwari, counsel appearing on behalf of the respondent has submitted that the entire properties, as detailed by the petitioner, are owned by parents of the respondent and there is no property in his name. He has no right in the properties of his parents and is presently unemployed and has no earnings. He further submitted that petitioner is earning Rs.10,000/- per month from

tailoring and embroidery work and she is living in her matrimonial home. Despite differences, she is being provided with all comforts and her necessary expenses including her medical needs which are being taken care of by the respondent.

4. It is an admitted fact that petitioner is residing in her matrimonial home. Therefore, she is being provided with a residential accommodation and she is not to bear any expenses for her residence. Petitioner has denied that she has any independent income from tailoring and embroidery work. Court, therefore, rightly did not believe the submissions of the respondent that petitioner was earning about Rs.10,000/- per month. Petitioner has not disclosed any source of income of the respondent. She has only referred to the immovable properties including the agricultural land, which, admittedly, are in the name of the parents of the respondent. Nothing was placed on record to show that respondent owned any property in his name independent of the immovable assets of his parents. Being a son, may be that he is living with his parents, the fact remains that he can be made liable to pay maintenance only from his earnings and not from the properties, unless these properties give him some rental income. In this case, neither respondent owned any property nor has any rental income.

5. Disbelieving the respondent that he was unemployed, Court awarded maintenance of Rs.3,000/- per month to the petitioner keeping in view the financial status of both the parties. In '*Smt. Jasbir Kaur Sehgal Vs. District Judge, Dehradun and Ors., MANU/SC/0835/1997*', it was observed that no set formula can be laid for fixing the amount of maintenance. It has, in very nature of things, to depend on the facts and circumstances of each case. While fixing the maintenance, 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 those he is obliged under the law and statutory but not voluntary payments or deductions. While awarding maintenance, Court also has to consider that amount fixed for the wife is such that she can have reasonable comfort in her life considering her status and living style which she maintained while living with her husband.

6. In this case, since Trial Court was not provided with any specific information regarding source of income of the respondent. It had to adopt a probable formula to award maintenance to the wife. Status of the parents of the husband, in no manner, can be considered by the Court while awarding maintenance to his wife. It is the duty of the husband to maintain the wife and not of his parents.

7. In view of my discussion as above, I find no reason to interfere in the impugned order of the Trial Court dated 8th August, 2008. Hence, petition is accordingly dismissed.

CM No.13003/2008 (for stay)

8. With dismissal of the petition itself, this application has become infructuous. It is accordingly dismissed.

**ARUNA SURESH
(JUDGE)**

**JULY 02, 2010
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