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## **Rakesh Kumar Vs Geeta Kaur**

**MAT App.(F.C.) 144/2014 and CM No. 19685/2014**

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**Court:** Delhi High Court

**Date of Decision:** May 20, 2015

**Acts Referred:**

Evidence Act, 1872 - Section 165#Hindu Marriage Act, 1955 - Section 10, 24

**Hon'ble Judges:** Kailash Gambhir and I.S. Mehta, JJ.

**Bench:** Division Bench

**Advocate:** R.K. Gupta and R.K. Yashwant Singh, Advocates, for the Appellant; H.C. Sharma, Advocate and Party-in-Person, for the Respondent

**Final Decision:** Dismissed

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## **Judgement**

@JUDGMENTTAG-ORDER

Kailash Gambhir, J.

Challenge in the instant appeal is to the order dated 24.09.2014 passed by the learned Principal Judge, Family Court,

Rohini, Delhi (hereinafter referred to as the "learned Family Court") wherein the learned Family Court has allowed the application preferred by the

respondent under Section 24 of the Hindu Marriage Act, 1955 with the direction to the appellant to pay a sum of Rs. 6,250/- per month towards

her interim maintenance from the date of filing of the application besides awarding a sum of Rs. 3,300/- towards litigation expenses.

2. Assailing the legality and correctness of the impugned order passed by the learned Family Court, Mr. R.K. Gupta, the learned counsel for the

appellant, submits that there being no basis, the learned Family Court has arbitrarily assumed and assessed the income of the appellant at Rs.

25,000/- per month and awarded an interim maintenance @ Rs. 6,250/- per month on this income. The learned counsel further submits that the

learned Family Court has also committed an apparent error in taking the view that the appellant is a skilled person and therefore, must be earning

an amount of Rs. 25,000/- per month. He further submits that the learned Family Court also failed to appreciate that the respondent herself is a

skilled lady possessing diploma in Computer DTP and has studied up to 12th standard and with this technical qualification of the respondent, she is

well capable of earning an handsome amount for her sustenance. The learned counsel also submits that the respondent is gainfully employed and is

working at a garment shop at Tilak Nagar but she has deliberately suppressed her income from the learned Family Court and from this Court as

well. The learned counsel also submits that presently the appellant is unemployed and has no source of income even for his own sustenance and

therefore, he is totally hard-pressed to pay any maintenance amount to the respondent.

3. The present appeal is strongly opposed by Mr. H.C. Sharma, the learned counsel for the respondent. He submits that the appellant is earning a

total income of Rs. 65,000/- per month as he is working as a Senior Software Designer (Engineer) in a factory of computer designs of all kinds of

designer soles of the shoes and sandals in Gurgaon. The learned counsel also submits that the appellant is an owner of two TSRs (3-wheeler

scooters) which he gives on contract basis to other persons and from this source also he earns an amount of Rs. 20,000/- per month. The learned

counsel also submits that the appellant is the only son of his parents and is a joint owner of property bearing No. D-50, Jaswant Colony, Budh

Vihar, Phase-II, Delhi. The learned counsel also submits that the appellant is in the habit of suppressing his correct and true income from the Court.

Earlier also an order under Section 24 of the Hindu Marriage Act, 1955 was passed against him in a petition preferred by the appellant under

Section 10 of the Hindu Marriage Act, 1955 and by the order dated 08.07.2010 passed by the learned Family Court, an interim maintenance of a

sum of Rs. 5,000/- was awarded as an interim maintenance assessing the income of the appellant at Rs. 20,000/- per month. The learned counsel

further submits that the said order dated 08.07.2010 was challenged by the appellant before this Court in C.R.P. No. 157/2010 and the said

petition was dismissed by the learned Single Judge of this Court vide order dated 20.08.2010 while upholding the order passed by the learned

Matrimonial Court. He further submits that in the order passed by the learned Single Judge of this Court it was observed that the appellant had

been trying to conceal his correct income from the Court. The learned counsel also submits that the appellant has been taking divergent stands as in

his reply to the application under Section 24 of the Hindu Marriage Act, 1955 he had disclosed his monthly income as Rs. 6,000/- and when his

statement under Section 165 of the Indian Evidence Act, 1872 was recorded then he disclosed his income as Rs. 7,200/- and now before this

Court he has taken a stand that he is unemployed and has no source of income. Based on these submissions, the learned counsel for the

respondent strongly urged that the present appeal being based on false and vexatious facts be dismissed with heavy costs.

We have heard the learned counsel for both the parties and have perused the material on record including the order dated 24.09.2014 which is

under challenge.

It is a matter of common knowledge that in maintenance proceedings the spouses do not come forward to disclose their true and correct income.

The suppression on the part of the earning spouse about his/her correct income makes the task of the Court quite difficult. A non-earning spouse

generally inflates the claim of maintenance so as to put a pressure on the earning spouse so as to bring him/her to come to the terms while on the

other hand the earning spouse, who mostly is the husband, would make every possible effort to suppress his correct income from the Court so that

the wife gets deprived from getting sufficient amount to sustain herself. The Hon"ble Supreme Court in the case of Smt. Jasbir Kaur Sehgal Vs.

District Judge, Dehradun and others, thus gave a solution to the Courts by suggesting that the Court must apply its own mind taking in view the

totality of the facts and decide the income of the earning spouse by resorting to some guess work. While taking this view the Hon"ble Supreme

Court had also put a note of caution that such a guess work should not be arbitrary, whimsical or fanciful.

In this context, we may also profitably quote a passage from the judgment in the case of Chander Parkash Bodh Raj Vs. Shila Rani Chander

Prakash, by this Court, wherein it has been opined that:

An able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able to reasonably maintain his wife and

child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for

such able-bodied person to show to the Court, cogent grounds for holding that he is unable to, for reasons beyond his control, earn enough to

discharge his legal obligation of maintaining his wife and child. When the husband does not disclose to the Court the exact amount of his income,

the presumption will be easily permissible against him.

It is also a settled legal position that the non-earning spouse has a right to enjoy equal status as is being enjoyed by the earning spouse and to live a

life of dignity according to the status of the earning spouse.

As pointed out by the learned counsel for the respondent, earlier also the order of maintenance dated 08.07.2010 passed by the learned Family

Court in a petition preferred by the appellant under Section 10 of the Hindu Marriage Act, 1955 was challenged by the appellant before this

Court. By order dated 20.08.2010, the learned Single Judge of this Court had dismissed the appeal preferred by the appellant and while upholding

the order passed by the learned Family Court made an observation that the appellant has been trying to conceal his true and correct income.

Relevant part of the said order is reproduced as under:--

Since the petitioner concealed his income from the Court, therefore, in such circumstances the Court taking a conservative estimate arrived at the

conclusion that the monthly salary of the petitioner would be Rs. 20,000/-. The Court in the absence of any proof did not believe that the petitioner

was running 2 three wheeler scooters. Taking into account the monthly income of the petitioner at Rs. 20,000/- p.m. and after deducting a sum of

Rs. 5,000/- p.m. on the maintenance and education related expenses of his minor son and after deducting 2/3rd of the remaining amount i.e. Rs.

15,000/- for his own maintenance and day to day expenses the Court directed the petitioner to pay a sum of Rs. 5,000/- to the respondent for her

maintenance and for her residential requirements. Photocopy of the salary certificate now placed on record by the petitioner is not on any

letterhead of the said factory. The same also does not bear any date and further it also does not disclose as in what capacity he has put his

signature. Hence no authenticity can be attached to the said photocopy of the salary certificate placed on record by the petitioner. It is apparent

that the petitioner has tried to conceal his income.

Before the learned Family Court as well as in the appeal, the appellant has not come forward to disclose his correct income. The appellant has also

not placed on record any evidence in the form of documents to show his employment with M/s. D.K.S. Engineering Works, as per the stand taken

by him in his statement recorded under Section 165 of the Indian Evidence Act, 1872.

The earlier certificate, which was filed by the appellant in reply to the application under Section 24 of the Hindu Marriage Act, 1955 is the same

certificate which was earlier filed by the appellant in the proceedings under Section 10 of the Hindu Marriage Act, 1955 and the learned Single

Judge commented on the said document as being the most unreliable piece of evidence.

We are also surprised on the stand taken by the appellant regarding his unemployment and that he has no source of income. The vacillating stand

of the appellant further demonstrates that his sole intention is to somehow deprive the respondent from getting any maintenance from him. It is not

expected of a person, who despite possessing technical qualification and skills, is not engaged in any job or not earning any amount. Earlier also

this Court had assessed the income of the appellant at Rs. 20,000/- per month and now to assess his income at Rs. 65,000/- after a gap of almost

5 years is quite realistic and cannot be faulted with.

In the light of the above discussion, we do not find any merit in the present appeal, same is hereby dismissed. No orders as to costs.