

Delhi High Court Ms. Sayali Phatak vs Mr. Vasant Pathak on 1 March, 2004
 Equivalent citations: 110 (2004) DLT 637, I (2004) DMC 632, 2004 (75) DRJ 403
 Author: V Sen Bench: V Sen JUDGMENT Vikramajit Sen, J. 1. The Husband as well as Wife have assailed the Order of the Additional District Judge dated 18.12.2003 by which the Husband has been directed to pay Rs.10,000/- for the maintenance of the Wife and their minor child with effect from the date of the filing of the application. The contention of learned counsel for the Husband is that this amount is too excessive whereas that of learned counsel for the Wife is that it is unrealistic keeping in view the respective earnings of the parties, the standard of living and the expenses of even the child alone. 2. Orders passed under Section 24 of the Hindu Marriage Act are essentially interim and interlocutory in nature and usually entail the substitution of the views of the Lower Court by those preferred by the Revisory Court. This exercise should certainly not be undertaken where the considerations are discretionary in nature. Ordinarily this Court would be slow to exercise its revisory powers especially in view of the amendments carried out in Section 115 of the Code of Civil Procedure and the authoritative pronouncements of the Hon'ble Supreme Court in Shiv Shakti Coop. Housing Society, Nagpur v. Swaraj Developers and others, . This is sufficient reason to reject the Revisions but since both the parties have approached this Court assailing the same Order, the matter has been given some consideration. 3. Interim maintenance is not granted as a penalty against either of the spouses. It is intended to ensure that the parties maintain a standard of living that is in close consonance with that enjoined by them as a family prior to the outbreak of their matrimonial differences and discord. Maintenance is not granted to enjoy an opulent life style. It is trite to state that the disposable incomes of both the spouses should first be calculated by a reasonable approximation and not a mathematical certainty. In the present case the Husband is a Captain in the Merchant Navy and submits that because of the nature of his work he is employed for six months out of the year. At the present stage of the litigation it will be fair to assume that the Wife earns approximately Rs. 40,000/- per month whereas the Husband earns Rs. 1,00,000/- per month. The Court would next have to assess the outgoings and liabilities of the respective spouses. Although the Husband has stated that he has aged parents to look after, his father is a retired Air Force Officer owning his own property, and surely enjoying a Government pension. There is nothing exceptional on the record to indicate that the Husband has to defray the expenses of his Parents out of necessity or some adverse quirk of fate. There is also nothing on the record to show the dependence of the sister on the Husband on him. His disposable income would, therefore, be around Rs.1,00,000/-. 4. So far as the Wife is concerned she has of course pleaded in her claim for custody that she is not in a financial position to maintain the child of the parties hereto. Such a pleadings are commonplace even though it is not necessary that either of the parent would be entitled to the custody of their child only if they are financially independent or well-off. This is a legal misnomer which need to be dispelled. While granting custody of the child the Court will have only one consideration in mind and that is welfare of the child. There is also no justification for

passing orders which would have the effect of placing one parent in a position where his/her entire income is used up and capital depleted, whilst the other spouse enjoys a large saving. These factors must also be balanced. Although, prima facie, I feel that extravagant expenses have been mentioned on behalf of the daughter of the parties keeping the status and life style of the respective spouses in perspective, the child's expenses would not exceed Rs.18,000/- per month. There is no reason to deprive a child of cultural exposures if the Parents can afford it. Counsel for the Wife has very fairly and reasonably stated that without going into the details of the income of the Husband the expenses of the child Aditi should be shared in the ratio of 2:1 keeping their earnings in perspective. By this calculation the Husband ought to contribute Rs.12,000/- per month for the maintenance of child Aditi. This ratio, however, only takes into account the differences in their salaries and not the possibility of their respective savings. In these circumstances although I find no jurisdictional error committed by the learned Additional District Judge which would call for the exercise of revisory powers under Section 115 of the CPC, the ends of justice would be met if the interim maintenance is increased to Rs.12,000/- per month. It is ordered accordingly. 5. The Revision petitions are disposed of in the above terms.