

Poonam Sethi vs Sanjay Sethi on 7 January, 2022

Author: Jasmeet Singh

Bench: Vipin Sanghi, Justicejasmeet Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 01.1

Judgment delivered on: 07.

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MAT.APP.(F.C.) 31/2021

POONAM SETHI

Through:

Mr. Bhuvan Mishra, Adv. wi

Appellant-in-person

versus

SANJAY SETHI

Through:

Mr. Anshul Narayan and Mr.

Pahwa, Advs. with Responde

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICEJASMEET SINGH

JUDGMENT

JASMEET SINGH, J

1. The present appeal has been filed under Section 28(2) of the Hindu Marriage Act, 1955 read with Section 19 (1) of the Family Courts Act, 1984 against the judgment and order dated 28.11.2020 passed by the Family Court (West) in the matter of Poonam Sethi Vs. Sanjay Sethi in HMA No. 39/2017. In the impugned judgment, the Family Court has allowed the petition filed by the Appellant wife under Section 13(1)(ia) of the Hindu Marriage Act, 1955 for dissolution of marriage by a decree of divorce on the ground of cruelty and has dissolved the marriage between the parties. However, the Appellant is aggrieved by the non-grant of maintenance allowance for herself and the two major daughters of the parties.

2. The Appellant has filed the present appeal seeking the following substantial the following prayer:

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"A) Set aside the Impugned Judgment and Order dated 28th November 2020, passed by the Ld. Judge, Family Court (West), Tis Hazari, Delhi, in the matter of "Poonam Sethi v.

Sanjay Sethi", bearing No. HMA 39/ 17 (Original Number being 1769/ 2014) to the extent that the same holds that (a) the Appellant (wife) is not entitled to any maintenance (u/s. 24 of the Hindu Marriage Act 1955) or Permanent Alimony (u/s. 25 of the Hindu Marriage Act 1955) for herself; (b) the Appellant (wife) is not entitled to any maintenance allowance for the two major daughters of the parties in the proceedings before the Ld. Family Court and; (c) to the extent that the same dismisses the Application for Temporary Injunction dated 30.10.2019 filed by the Appellant;

B) Grant the consequential relief of Maintenance and Permanent Alimony to the Appellant as prayed for in the Applications filed before the Ld. Family Court; C) Pass any such and other order/s as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case;"

3. Briefly stating the facts giving rise to filing of the present appeal are as under.

4. The Appellant got married to the Respondent on 11.10.1986 as per Hindu rites and ceremonies. Since marriage, the Appellant was residing with the Respondent at First Floor, F-90 Kirti Nagar, New Delhi. Out of the wedlock, 3 children were born, namely Sahiba (DOB-03.11.1987), Ananya (DOB- 28.08.1994) and Atharv (DOB- 11.07.1997). The eldest daughter Sahiba is currently working in London after completing her graduation in Fashion Journalism from London. The other children, namely, daughter Ananya and son Atharv are in Appellant's sole care and custody.

5. It is the case of the Appellant that for the past 9 - 10 years, all 3 children were brought up by the Appellant single handedly, including taking care of their food, clothes, education, tuitions, travelling, extracurricular activities, entertainment, sports, medical needs etc. without any contribution from the Respondent.

6. It is the case of the Appellant that owing to the abdication of duties by the Respondent since the year 2010, the Appellant started crumbling under the financial burden of supporting their 3 children all on her own, without any financial relief for such a long period.

7. It is in this background, that the Appellant filed an application for maintenance pendente lite on 19.03.2015 under Section 24 read with Section 26 of the Hindu Marriage Act, 1955 for herself and her minor son. The Appellant also filed a detailed income affidavit along with the relevant documents. After the judgment of Kusum Sharma vs. Mahender Sharma, the Appellant again filed a detailed income affidavit on 11.12.2015, along with supporting documents including bank statements and invoices.

8. In the year 2016, Respondent also filed an income affidavit stating that he is unemployed and has no income. On 21.02.2017, the Appellant filed another application under Section 24 of the Hindu Marriage Act, 1955 for urgent directions to the Respondent to pay to the Appellant, an amount commensurate with his income. As per the Appellant, the Family Court was of the opinion, that instead of deciding

upon an interim maintenance which may not sufficiently take care of the needs of the Appellant and her children, the Appellant may lead her evidence in the matter comprehensively (including on financial aspects) so that matter of financial reliefs can also be decided together in the end.

9. In the cross-examination, the Respondent admitted to the following facts:-

"1. That he does consultation (numerology) for a living (Cross Examination dated 21.01.2019);

2. That he has been travelling abroad for work including USA in the year 2016 (for a month) and UAE in 2017 (for a month) where he had done consultations, interviews etc. (Cross Examination dated 21.01.2019);

3. That he has been running a company by the name of "Pure Life" (Cross Examination dated 21.01.2019);

4. Hefty payments both in Indian as also in Foreign Currency for his consultations were received by him. (Cross Examination dated 28.02.2019);

5. That he had purchased a Mercedes E- 250 in the year 2017 (Cross Examination dated 28.02.2019);

6. That he has substantial mutual fund investments in HDF, IDFC, Kotak, Franklin Templeton, NSE MF and ICICI (Cross Examination dated 28.02.2019);

7. That he has Medical Insurance in Apollo Munich, premium payment for which is Rs. 5,00,000/- (Cross Examination dated 28.02.2019);

8. That he also has a Toyota Corolla Car, purchased in 2013 (Cross Examination dated 28.02.2019);

9. That he has been advertising in Hindustan Times (HT Media) for his numerology business for which substantial payments, to the tune of Rs. 1 Lakh every alternate month, has been made (Cross Examination dated 28.02.2019);

10. That he had purchased an Office Space in May 2018 for a sum of Rs. 50 Lacs (Cross Examination dated 28.02.2019);

11. That he has been running a company called "Rudra Kripa"

since July 2018 (Cross Examination dated 28.02.2019);

12. That his personal expenses per month are to the tune of Rs.

25,000/- per month (Cross Examination dated 28.02.2019);

13. That expenses for running his office are to the tune of Rs.

35,000/- per month (Cross Examination dated 09.07.2019);

14. That credit limit for his Credit Card (Axis Bank) is unlimited;

15. That he has also been selling products online through platforms like Flipkart, Snap deal, Amazon, Shop clues and India mart (Cross Examination dated 21.08.2019);

16. That he is not sure if payments indicated in his bank statements are reflected in his ITR, or not (Cross Examination dated 21.08.2019)"

10. On Diwali of 2019, the Appellant visited her matrimonial home at First Floor, F-90, Kirti Nagar, New Delhi-110015, and found that the property was closed and covered with tarpaulin. When the Appellant asked around, she found out that the property was closed for renovation and would be put up for sale. As a result of which, the Appellant filed an application for temporary injunction on 30.10.2019 praying for directions restraining the Respondent from disposing off, selling, encumbering, mortgaging, or in any way alienating the matrimonial home of the parties i.e. First Floor, F- 90, Kirti Nagar, New Delhi-110015.

11. The Appellant on 01.09.2020 also filed an application under Section 25 of the Hindu Marriage Act, 1955 so that while deciding the main petition, the learned Family Court if decreeing the petition, may pronounce upon the permanent alimony at the time of passing the decree.

12. It is the case of the Appellant that owing to the Respondent's abdication of duties since the year 2010, the Appellant was under

extreme financial burden of having to support the 3 children on her own for such a long period. It was the Appellant's plea that she was entitled to, at least, a commensurate compensation from the father of the 3 children who ought to be responsible towards the needs of children in consonance with the social standing, and income of the Respondent.

13. The learned Family Court in the impugned order held: -

"19.7 Thus, it is clear that the provisions of section 20 of the Hindu Adoption and Maintenance Act, 1956 cannot be used to expand the provisions of section 26 of the Act. In view of the aforesaid, it is considered that the major daughters of the parties are not entitled to maintenance in these proceedings. "19.8 Adverting, to the issue of maintenance for the son of the parties, their son Master Atharv, born on 10.07. 1997,

was minor at the time of filing of application dated 19.03.2015.

According to the petitioner, on the education of minor son, she had been spending about Rs.10,000/- per month, his quarterly fees was Rs.37,000/- and in the year 2015, she had paid 1/3rd of Rs.5,60,000/- for his three years film making degree course, which comes to Rs.1,86,667/-. She further stated that, the expenditure on his bookstand stationery was Rs.5,000/- private tuition was Rs.30,000/- per month and medical expenses was Rs.15,000/- per month. It can be seen that the copies of receipts for private tuition fees filed by her along with her affidavit are (i) Receipt for Rs.3,72,000/- from One Sunil Kaushik @ Rs.12,000/- per month for the period, May 2012 to November 2014 and (ii) Receipt for Rs.5,94,000/- @ Rs.18,000/- per month w.e.f. March 2012 to November 2014 from one Mr, Ravi. However, she had notified any document with regard to medical expenses incurred on Master Atharv. It is well settled that the date from which maintenance is to be awarded is the date for filing the application for maintenance. In this regard reference can be made to Rajnesh vs. Neha, 2020 SCC, Online SC 903. Thus, it appears that w.e.f. 19.03.2015 till the attainment of majority of minor son Master Atharv, the petitioner had spent about Rs.50,000/- per month towards the maintenance of her son. The Respondent ought to equally, share the said expenses. In this regard reference can be made to Rupali Gupta vs. Rajat Gupta, 2016, SCC Online, DeL 5009 and Ashutosh Bandhopadhyay vs. Mukta Bandhopadhyay 2018, SCC Online Cal.5100. Thus, it is considered that the petitioner is entitled to Rs.25,000/- per month towards maintenance allowance of her minor son w.e.f. filing of application i.e., 19.03.2015 till he attained the age of majority i.e. 11.07.2015. 19.9 In view of the aforesaid discussion, it is held that (i) the petitioner is not entitled to any maintenance allowance or permanent alimony for herself (ii) she is also not entitled to any maintenance allowance for the two major daughters of the parties-in these proceedings, and (iii) the petitioner is entitled to Rs.25,000/- per month towards maintenance allowance for her minor son w.e.f. filing of application i.e., 19.03.2015 till he attained the age of majority i.e., 11.07.2015.

Accordingly, the Respondent is directed to pay a sum of Rs.25,000/- per month towards maintenance allowance of his minor son w.e.f. filing of application 19.03.2015 till he attained the age of majority i.e., 11.07.2015. The said amount be paid directly in the bank account of the petitioner. He is directed to pay the said amount within three months. The application dated 19.03.2015 under sections 24 & 26 of the Act, application dated 20.02.2017 under section 24 of the Act and application dated 01.09.2020 u/s 25 of the Act moved by the petitioner are disposed off accordingly. In view of the aforesaid discussion and findings, application dated 30.10.2019, for temporary injunction, moved by the petitioner, which has otherwise also become infructuous, is dismissed." (emphasis supplied)

14. Since the appeal was taking long time, the Appellant filed an application bearing CM No. 13597/2021 seeking appropriate directions to the Respondent to pay a sum, in consonance with his social standing, towards the marriage of the younger daughter of the parties.

15. We had called the parties for a personal interaction on 24.11.2021 to explore the possibility of an amicable settlement. However, the same did not fructify. We, therefore, fixed the appeal for hearing.

16. We heard Mr. Bhuvan Mishra, learned counsel for the Appellant and Mr. Anshul Narayan, learned counsel for the Respondent. The learned counsel for the Appellant argued that the Appellant-wife has been supporting all three children for more than a decade, taking care of all their expenses and needs. He submits that under the Hindu Adoption and Maintenance Act, 1956 it is the obligation of the husband to maintain his wife and unmarried daughters. Thus, since the Appellant-

wife has been maintaining the daughters, she is entitled to claim maintenance for herself, and her unmarried daughters.

17. He has relied on *Jasbir Kaur Sehgal v. The District Judge, Dehradun* (1997) 7 SCC 7, wherein the Supreme Court observed that the wife who is maintaining the unmarried major daughter of the parties, would be entitled to maintenance for both herself and the major unmarried daughter. He submits the daughters must be treated as 'dependants' under section 21(v) of the Hindu Adoption and Maintenance Act, 1956 and as a result are entitled to receive maintenance from their father. The mother has been taking care and looking after all the expenses of the 3 children since the time of separation, and the father cannot abdicate from his legal and moral duties.

18. The learned counsel for the Appellant, further, argued that for the marriage of the daughters of the parties, the mother cannot alone be responsible and be expected to incur the costs of their respective marriages.

19. While the family court has provided some relief for the then minor son of the parties, it failed to consider that as the son turns major, he will need to be supported for his daily expenditure and higher educational expenses, which the Appellant will have to bear.

20. Per contra Mr. Narayan, learned counsel for the Respondent has argued that, firstly, the Appellant-wife herein is earning a handsome income as shown by her income affidavits. Secondly, the major unmarried daughters of the parties are earning their own independent incomes, and thus able to maintain themselves. Thirdly, that maintenance does not need to be granted to a major son and, as a result, this appeal should be dismissed.

21. Learned counsel for the Respondent has supported the judgment of the Family Court, and has stated that: -

a) The gross income of the Appellant as disclosed by her is as under: -

"It is pertinent to note that as per the Income Tax Returns filed by the petitioner, her gross income for the assessment year 2012-13 was Rs.8,28,153/- for the assessment year 2013-14, it was Rs.16,76,824, for the assessment year 2014-15, it was Rs.20,09,029/- for the assessment year 2017-18, it was Rs.9,72,407/- for the assessment year 2018-19, it was Rs.11,48,114/- and for the assessment year 2019-20, it was Rs. 11,66,770/-per annum. As per the Income Tax Returns of the Respondent his gross income for the assessment year 2014-15 was Rs.2,26,865/-, for the assessment year 2015-16, it was Rs.2,65,520/-for the assessment year 2016-17, it was

Rs.2,90,390/- for the assessment year 2017-18, it was Rs. 3,28,615/- for the assessment year 18-19, it was Rs.4,03,279/- and for the assessment year 2019-20, it was. Rs.3,31,966/-."

Whereas the gross income of the Respondent is as under:-

"Respondent has claimed a monthly maintenance allowance of Rs.20,000/-. However, as per the Income Tax Returns filed by him, his gross annual income for the assessment year 2019-20 was Rs.3,31,966/-, which comes to Rs.27,663.83 per month."

22. Hence, it was claimed that the Appellant was earning more than 10 times than the Respondent. Learned counsel for the Respondent has further submitted that the Appellant was earning crores of rupees, as her annual expenditure - as disclosed by her, was Rs. 82,82,708/-. She has not been able to clarify the sources from which she has been able to meet the said expenditure incurred by her. There is gross mismatch between the income earned by her, and expenditure stated to have been incurred by her.

23. As far as the legal obligation of the Respondent is concerned, it is argued by the learned counsel for the Respondent that all the children are majors, and that Section 24, 25 and 26 of the Hindu Marriage Act, 1955 are not attracted in the facts of the present case. The only statutory provision that could be attracted is Section 20 of the Hindu Adoption and Maintenance Act, 1956 which also restricts the maintenance only to the extent of providing the same to unemployed and dependent daughters.

24. Section 20 of the Hindu Adoption and Maintenance and Act reads as follows:

"20. Maintenance of children and aged parents. --

(1) Subject to the provisions of this section a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property. Explanation. -- In this section "parent" includes a childless step-mother."

25. It was argued by the counsel for the Respondent, that in the present case, none of the daughters are dependent on the Appellant, and even Section 20(3) is not attracted, as both are earning

independently and maintaining themselves.

26. Per Contra, the learned counsel for the Appellant-wife submits that there is nothing to substantiate this claim of the Respondent, that the younger two children of the parties are earning any income.

27. We have heard the learned counsels for the parties and have gone through their submissions.

28. The first and foremost question which needs to be answered in this appeal is "Whether unmarried daughters who have attained majority and are earning their own income are entitled for maintenance and expenses towards their marriage?"

29. Firstly, we must take note that under Section 20 of the Hindu Adoption and Maintenance Act, maintenance will only be paid to children or infirm parents, if they are unable to maintain themselves. There is no section which states that the inability to maintain themselves (both with regard to children and parents) is equivalent to not earning an income. We must distinguish between the two categories. An individual could be earning an income, but still not necessarily be able to maintain herself/himself.

30. Learned counsel for the Respondent has relied upon the judgments of *Chaturbhuj v. Sita Bai* (2008) 2 SCC 316 to state :

"7. Under the law the burden is placed in the first place upon the wife to show that the means of her husband are sufficient. In the instant case there is no dispute that the appellant has the requisite means. But there is an inseparable condition which has also to be satisfied that the wife was unable to maintain herself. These two conditions are in addition to the requirement that the husband must have neglected or refused to maintain his wife. It has to be established that the wife was unable to maintain herself. The appellant has placed material to show that the Respondent-wife was earning some income. That is not sufficient to rule out application of Section 125 Cr.P.C. It has to be established that with the amount she earned the Respondent-wife was able to maintain herself.

8. In an illustrative case where wife was surviving by begging, would not amount to her ability to maintain herself. It can also be not said that the wife has been capable of earning but she was not making an effort to earn. Whether the deserted wife was unable to maintain herself, has to be decided on the basis of the material placed on record. Where the personal income of the wife is insufficient she can claim maintenance under Section 125 Cr.P.C. The test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband. In *Bhagwan v. Kamla Devi* (AIR 1975 SC 83) it was observed that the wife should be in a position to maintain standard of living which is neither luxurious nor penurious but what is consistent with status of a family. The expression "unable to maintain herself" does not mean that the wife must be absolutely destitute before she can apply for

maintenance under Section 125 Cr.P.C." (emphasis supplied)

31. He also relied on the finding returned by the Family Court in the present case, which reads:

"19.5.....It is observed that both the daughters Ms. Ms. Sahiba and Ms. Ananya were major on the date of filing of application i.e. 19.03. 2015. As per Section 26 of the Act, only minor children are entitled to maintenance. In Kartar Chand Dalli Ram Jain vs. Tarawati Kartar Chand Jain, AIR 1982, Bombay 15, the Hon'ble High Court of Bombay has held, "9. Now, it may be pointed out that on a reading of S. 24, it becomes evident that section makes provision for granting maintenance pendente lite to a party who has no independent income sufficient for his or her support. This section does not provide for granting maintenance for the children. Section 26 of the said Act provided for interim orders from time to time as also for making provision in the decree with regard to custody, maintenance and education of minor children consistently with their wishes. Section 26, therefore, empowered the Court to provide for the maintenance of minor children. It provided for maintenance both pendente lite as also after the passing of the decree. The learned Judge in granting separate maintenance to each of the three adult daughters had clearly traversed beyond the scope of Section 24 and S. 26 of the said Act. The learned Judge having transgressed beyond the scope of the provision of the sections in exercising his jurisdiction, his order was invalid and contrary to law. That being the case, the petitioner was entitled to approach this Court in revision. I, therefore, negative this submission of Mr. Nain.

19.6 Relying upon the aforesaid judgment, the Hon'ble High Court of Delhi in Naveen Nangia vs. Chitra Gauba Nangia (Mt.Appeal(FC) 16/2014 decided on 28.05.2015) has held, "6. Section 26 of the HMA empowers the Court to make provisions for maintenance of only minor children and therefore to grant maintenance in favour of the adult child would be beyond the scope of Sections, 24 and 26 of the Hindu Marriage Act, 1955. Proper legal course in such a situation would be to seek maintenance under Section 20 of the Hindu Adoption and Maintenance Act, 1956 and not under Section 24 and 26 of the HMA (Ref: Katarchand Daltiram Jain v. Smt Taravatikatarchand Jain, AIR 1982 Bom).....

8. Section 26 of the HMA make's it amply clear that the jurisdiction of the Court to pass an order of maintenance is restricted to a minor child alone and once the child attains the age of majority, the provision of section 26 of the HMA in so far as awarding of the maintenance is concerned, would cease to apply (Ref: Smt Alka Bhaskar Bakre v. Bhaskar Satchidanand Bakre, AIR 1991 Bom 164)."

In this regard, reference can also be made to "Tarini Kr. Gautam vs. District Judges, Mathura & Ors. 1983, SCC Online All. 367, Alica Bhaskar Bakre v. Bhaskar Satchidanand Bakre 1990 SG Online Bora 8 and B (Husband) vs; A (Wife), 1992 Mh. LJ. 748.

19.7 Thus, it is clear that the provisions of section 20 of the Hindu Adoption and Maintenance Act, 1956 cannot be used to expand the provisions of section 26 of the Act. In view of the aforesaid, it is considered that the major daughters of the parties are not entitled to maintenance in these proceedings."

32. In *Jasbir Kaur Sehgal v. The District Judge, Dehradun* (supra) the Supreme Court held:

"6.Section 24 of the Act no doubt talks of maintenance of wife during the pendency of the proceedings but this section, in our view, cannot be read in isolation and cannot be given restricted meaning to hold that it is maintenance of the wife alone and no one else. Since wife is maintaining the eldest unmarried daughter, her right to claim maintenance would include her own maintenance and that of her daughter. This fact has to be kept in view while fixing the maintenance pendente lite for the wife.

8. The wife has no fixed abode of residence She says she is living in a Gurudwara with her eldest daughter for safety. On the other hand husband has sufficient income and a house to him. The wife has not claimed and litigation expenses in this appeal. She is aggrieved only because of the paltry amount of maintenance fixed by the court. No set formula can be laid for fixing the amount of maintenance. It has, in the very nature of things, to depend on the facts and circumstance of each case. Some scope for leverage can, however, be always there. The 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 involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate. In the circumstances of the present case we fix maintenance pendente lite at the rate of Rs. 5,000/- per month payable by Respondent-husband to the appellant- wife.

9. The question then arises as to from which date the wife would be entitled to claim the enhanced amount of maintenance pendente lite. If wife has no source of income, it is the obligation of the husband to maintain her and also children of the marriage on the basis of the provision contained in the Hindu Adoption and Maintenance Act, 1956. Her right to claim maintenance fructifies on the date of the filing of the petition for divorce under the Act. Having thus fixed the date as the filing of the petition for divorce it is not always that the court has to grant the maintenance from that date. The court has discretion in the matter as to from which date maintenance under Section 24 of the Act should be granted. The discretion of the court would depend upon multiple circumstance which are to be kept in view. These could be the time taken to serve the Respondent in the petition the date of filing of the application under Section 24 of the Act; conduct of the parties in the proceedings; averments

made in the application and the reply there to; the tendency of the wife to inflate the income out of all proportion and that of the husband to suppress the same; and the like. There has to be honesty of purpose for both the parties which unfortunately we find lacking in this case. We are therefore of the opinion that ends of justice would be met if we direct that maintenance pendente lite as fixed by this judgment to be payable from the date of impugned order of the High Court which is October 16, 1996. We order accordingly. The impugned judgment of the High Court shall stand modified to that extent. All arrears of maintenance shall be paid within a period of two months from today and then regularly every month." (emphasis supplied)

33. Reliance has also been placed on *Madhavi Dudani v Ramesh Dudani*(AIR 2006 Bom 94), wherein it was stated:

"29. In the circumstances, there is good substance in the submission of Mr. Thakkar that nothing additionally be provided to the Appellant wife when acts of cruelty are alleged against her also and when she is also responsible for the breaking of the marriage. In any case, she has been sufficiently provided and has good income therefrom. We have however to note that she is looking after her two daughters. The daughters are treated as "dependents" until they get married under section 21(v) of the Hindu Adoption and Maintenance Act, 1956. They are entitled to get their maintenance from their father. Considering the fact that the Appellant has been looking after these two daughters and she will be continuing to look after them hereafter until they get married. In our view, that is a "circumstance" which has got to be considered when one decides the permanent alimony to be paid to the Appellant wife. Section 25 of the Hindu Marriage Act provides that a court exercising jurisdiction under the Act at the time of passing of the decree may direct the Respondent to pay the Applicant for her maintenance and support such gross sum or such monthly or periodical sum, having regard to the Respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the court to be just. The court is empowered that such payment may be secured by a charge on the immovable property of the Respondent. In the circumstances of the case, we have to note that the Appellant is looking after the two daughters. They have completed their education. They have become graduates in engineering and management respectively. They intend to further prosecute their studies and then get married. They do not have any income of their own. The Appellant is undoubtedly spending for their education and will spend on their marriage. It will not be proper to drive the daughters to file an application under the Hindu Adoption and Maintenance Act, 1956. In our view, the phrase "other circumstances of the case" appearing in section 25 of the Hindu Marriage Act is quite elastic and while passing an order under that section, the necessary provision can be appropriately made if the circumstances so justify.

30. The Respondent has been made to make such payment from time to time and Mr. Thakkar has stated that he has been making additional payment for education of her daughters on his own. The fact however remains that the burden has been on the Appellant all throughout. The burden for further education and thereafter marriage is much more. They are daughters of an industrialist who are being looked after by the mother. In the circumstances, though we may not provide separately for the Appellant, considering these circumstances, we deem it just that separate provision should be made for the two daughters along with the Appellant. The provision of such an amount will take care of their future education and marriage. In our view, it will be just and appropriate that an amount of Rs. 10,00,000/- is provided for each of the daughters....." (emphasis supplied)

34. A bare perusal of the aforesaid observation clearly shows that be it under Section 24 of the HMA Act, 1955, or Section 20(3) of the Hindu Adoption and Maintenance Act, 1956, a father cannot abdicate his responsibility of looking after his unmarried daughters. A father has a duty and an obligation to maintain his daughters and to take care of their expenses, including towards their education and marriage. This obligation is legal and absolute in character and arises from the very existence of the relationship between the parties. Kanya Daan is a solemn and pious obligation of a Hindu Father, from which he cannot renege.

35. Despite the applications of the Appellant being pending for claiming maintenance for the unmarried daughters, the Family Court, in the impugned order, failed to advert to any of the contentions of the Appellant. The Family Court has not dealt with aspect of applicability of Jasbir Kaur Sehgal (supra) in the facts of the present case.

36. The Family Court, without adverting to the evidence and documents on record, in a cryptic manner, has held that Section 20 of the Hindu Adoption and Maintenance Act, 1956 cannot be used to expand the provisions of Section 26, and hence major daughters of the parties are not entitled to maintenance. This view is clearly not supported by the precedents taken note of hereinabove.

37. As regards the minor son, the Family Court has granted maintenance at the rate of Rs. 25,000/- per month from 19.03.2015 till 11.07.2015 i.e. the date of attaining majority by the son.

38. The purpose of Section 24 and 26 is not to equalize the incomes of the parties. We held in Mahima Chaturvedi v Deepak Malhotra (2021 SCC Online Del 3907) that:

"8. The Delhi High Court in case titled K.N. v. R.G. (Supra) (as also been relied upon by the Ld. Family Court) has categorically held that:

"where the spouse is qualified and is actually earning, interim maintenance under Section 24 need not be granted. The provision of this section are not meant to equalize the income of the wife with that of the husband but are only to see that when divorce or other matrimonial proceedings are filed, either of the party should not suffer because of paucity of source of income and the maintenance is then granted to

tie (sic tide) over the litigation expenses and to provide a comfortable life to the spouse. Where, however, both the spouses are earning and have a good salary, merely because there is some salary difference cannot be a reason for seeking maintenance."

9. Hence, we are clear that the appellant is a well-qualified professional and is drawing a salary of 85,000/- month which is adequate for a comfortable life. In *K.N. v. R.G.*, it has been held that the provision of section 24 are not meant to equalize the income of the spouses but only to see that no spouse should suffer due to paucity of income. The purpose to grant maintenance is to tide over litigation expenses and to provide a comfortable life to the spouse."

39. The Family Court has held that the Petitioner is herself not entitled to any maintenance allowance or permanent alimony, as she was doing well professionally, and earning substantial sums of money. As far as the finding vis-à-vis the Appellant wife is concerned, we uphold the judgment of the Family Court, and are of the view that there is sufficient material on record, as well as the income affidavit of the Appellant, which shows her to be engaged in the profession of tarot reading. While her total resources, as taken note by the learned Family Court, amounted to Rs.67 lacs, her income affidavit of the year 2019-2020, shows an income to the tune of Rs. 11,66,770/-per annum.

40. However, as regards the daughters, we are not in agreement with the learned Principal Judge, Family Court when it holds that as the daughters were majors on the date of filing the application, they were not entitled to any maintenance. The daughters may be of majority age today. However, the Respondent is still their father. He cannot simply resile from that relationship, and the accompanying legal and moral obligation, and state that he will not take care of them. The father's duty to maintain his unmarried daughters, including his duty to provide for their marriage is clearly recognized by the law.

41. The argument of the learned counsel for the Respondent that the daughters should not receive any maintenance as they have an income cannot be accepted. In this regard, Section 20(3) of the Hindu Adoption and Maintenance Act may be seen. It provides for the maintenance of children and aged parents. An unmarried daughter, even if employed and earning, cannot be assumed to have sufficient resources to meet her matrimonial expenses. In the Indian context, the marriage of a son or a daughter would be expected to be performed, in keeping with the financial and social status of the parents. It is customary for the parents of the son/daughter- who is getting married, to deploy their resources for the wedding, to the best of their financial capacity. This is particularly true when marrying of a daughter, as the parents try to ensure that she is well provided for in the matrimonial home when she would begin her new life. In the Indian society, the marriage of a daughter is considered of paramount importance from the birth of the child. Parents from the very beginning start saving jewelry and money for the marriage of their daughters.

42. It has been held in *Ambika v. K. Aravindakshan* (2018) SCC Online Ker 22431 :

14. In *Smt. Sneha Prabha v. Ravinder Kumar* : 1995 Supp (3) SCC 440 : AIR 1995 SC 2170, it has been held that even in case of daughters who are grown up and living

with mother and maintained by mother who is employed and earning salary, they are entitled to get financial assistance from their father at the time of their marriage. Even in a case where the unmarried daughter is living with the mother, who is getting some income and is being looked after by her, she is entitled to claim maintenance from the father also which includes the educational expenses and marriage expenses. Merely because the mother is looking after the affairs of the unmarried daughter including performance of marriage, it will not exonerate the father from his legal and personal obligation to contribute his share for that purpose (*Leelamma v. Moni* :

2017 (3) KHC 340).

15. Now we come to the question of quantum of the marriage expenses. As per Section 3(b)(ii) of the Act, in the case of an unmarried daughter, 'maintenance' includes not only the reasonable expenses of marriage but also expenses incident to her marriage. Marriage expenses are of two types :

(1) which are directly incurred for marriage; and (2) which are incurred indirectly or incidentally to the marriage." (emphasis supplied)

43. While analyzing the provisions of the Hindu Adoption and Maintenance Act, in *Kusum v Krishnaji* (2008 SCC Online Bom 28), it was observed that:

"9. The question as to whether plaintiff's suit should completely fail simply because the evidence of borrowing money from these persons is found to be not worthy of credit. We have seen that defendant is admittedly the father of the three daughters whom the plaintiff got married. Every father is under an obligation to maintain his daughters and even to get them married. The obligation to maintain the daughter and get her married is said to be personal in character and arises from the very existence of the relationship. Under the Hindu Law, a daughter is entitled to be maintained out of estate of her father even after the death of the father. In the instant case, the father is alive and admittedly has source of income from salary and agriculture land. A father who lives separately from his wife, therefore, cannot escape the liability to maintain his daughters. Here, it would be necessary to look into the definition of the word maintenance as given in the Hindu Adoptions and Maintenance Act, 1956. The word has been defined as follows'--

"maintenance" includes -- (i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment;

(ii) in the case of an unmarried daughter, also the reasonable expenses of and incident to her marriage;

10. The definition is inclusive. It includes the provision of the reasonable expenses of and incident to marriage of daughter.

It is thus clear that father, who has deserted his wife and daughters is also liable to make provisions of reasonable expenses for the marriage of daughters. Thus, not under the old Hindu Law but under the codified Hindu Law also the father is bound to make such a provision as can be seen from the definition of word maintenance." (emphasis supplied)

44. In *Jasmeet Kaur Talwar & Anr v. Gurjit Singh Talwar* (2014 SCC Online Del 6576) , the Court has held:

"19. But now the question arises, what are the reasonable expenses in a marriage and to what extent can a wife or for that matter, a daughter force her husband/father to meet the expenditure on the marriage of the daughter. It may be noted that affluent people do spend huge amounts of money on building houses and solemnizing weddings in the family. If the Respondent can own a bungalow in Sainik Farm, have a major stake in Talwar Hospitality Pvt. Ltd. which owns the earlier said resort and has various other properties, he has the capacity and can spend a good amount on his daughter's wedding as well. The Petitioners have given various claims which total up just above Rs. 66 lacs.

25. Hence, it can safely be said that "reasonable expenditure"

in the context of the expenditure on marriage of an unmarried daughter will mean that it is fair and not too high.

However, it will be difficult to calculate reasonable expenditure by precise mathematical calculations. The Court will have to reach to a sum primarily considering the financial status of the parties. For that purpose, the Court also has to make some guess work.

26. I have already observed above that the Respondent maintains luxury cars and is a major shareholder in Talwar Hospitality Pvt. Ltd. which runs a luxurious resort in Manali. This fact has not even been disputed by the Respondent. It is also evident from the record that the Respondent has pledged about 1 kg. of gold. to avail credit facility. It can also be presumed that the credit facility must have been obtained by the Respondent in connection with his business.

30. Although, it is very difficult to say as to what would be the reasonable expenditure on the marriage of a daughter, but in case of a father who may have means and in the circumstances of this case, the reasonable expenditure of marriage would approximately be Rs. 37 lacs." (emphasis supplied)

45. The term "maintenance" in The Hindu Adoption and Maintenance Act, under section 3(b)(ii) includes reasonable expenses of, and incidental to the marriage of unmarried daughters. The same has been duly considered and approved in *Jasmeet Kaur Talwar & Anr* (supra) and *Kusum v Krishnaji* (supra). Hence, in light of the aforesaid judgments and precedents set, we are of the view that the two daughters - who have attained majority, are also entitled to maintenance amount for their wedding expenditures.

46. The next question which arises for our adjudication is the quantum of maintenance that should be awarded towards marriage expenses of the two daughters of the parties. The Family Court has already held that both the parties are guilty of suppressing their true income. None of them has come with clean hands and disclosed their true income. However, the Family Court has opined that the income of the Respondent is, at least, Rs. 4-5 lakhs a month, which would tantamount to approximately Rs.60 lakhs a year.

47. The Family Court has also held that the matrimonial home was sold by the Respondent, which according to the Appellant, was worth Rs.4-5 crores, and that the Respondent had purchased a new flat in Gurgaon for Rs.1,75,00,000/-.

48. The Respondent in his cross-examination has categorically stated that he has an office; he is running an online business by the name of Pure Life and Rudra Kripa; he is running an extremely successful practice of numerology, he has a well-trained staff, and he has a variety of investments and mutual funds. The Respondent has further stated that he has been visiting places like Dubai, Hong Kong and New York amongst others. Though he claims his trips are funded by others, he has not provided any particulars and, therefore, his story cannot be believed.

49. The Respondent also owns a Mercedes-250 car and a Toyota Corolla car, both of which would be worth lakhs. He has also bought an office space in 2018 worth Rs.50,00,000/-. He has also admitted to carrying out advertisements for his numerology business in various national dailies. Obviously, he finds it profitable to incur such expenses, and the returns would be manifold.

50. In the cross-examination, the Respondent had deposed:

".....The payments for the aforesaid foreign visits are not mentioned in my bank statement. Again said, those payments were sent by my friends, who financially helped me for my abroad travel. I get my clients through reference.....
.....During my visit in the year 2016, I was in USA for a month. I stayed at USA at my friend's house at Long Island, New York. During my visit in the year 2017, I was in Dubai for a month. I stayed at Dubai at my friend's house at Bur, Dubai. I never stayed in any of the hotels during my aforesaid stay at Dubai and USA. I went alone.

..... In the said statement, the payment of Rs. 98,625/- reflected as a credit is from a client (numerology) namely Ashutosh Hans. The payment of Rs.1,37,190/- dated 20.02.2018 is also from a client. All payments which have been credited as NEFT/MSWIPE are from clients as consultation fees. The payment which has been debited to NACH-DE-CTDAIMLFIN is towards car EMI for a Mercedes E-250.

.....The payments reflected towards HDFC, Kotak MF, Franklin Templeton, NSE MF, ICICI, HDFC are towards mutual fund investments. Further, the payment debited to New India Assurance is towards the insurance of my Toyota Corolla car which was purchased in 2013. The said car was a pre-used one. The payment debited

for Apollo Munich for medical insurance for a sum of Rs.5,00,000/-. I am not using any other car except for the aforesaid cars. The payment debited to HT Media is for advertisement for my numerology business. The payment debited to M3M Corner Walk is towards the payment for the booking of office space (area measuring approximately 700 Sq. Feet). The said office was booked in May 2018 for a sum of Rs.50 Lacs.

..... I do not have any other bank account apart from the Axis Bank account which I had mentioned already before the court. I am having only 01 credit card of Axis Bank. The credit limit of the said card is unlimited. It is correct that I have been carrying business in the name of 'Pure Life' till about March 2017. All transactions mentioned in my 'Pure Life' Bank statement relating to Flipkart, Snapdeal, Amazon, shop-clues and Indiamart are the platforms through which I sell my products."

51. The bogey set up by the Respondent that he had visited US and other places with his friends, who had funded his trips, does not inspire our confidence. The Respondent has failed to produce any friend who had advanced him money, and the best evidence available was not produced. Therefore, we are inclined to draw an adverse inference against him.

52. A bare perusal of the Respondent's own claims of expenditure do not add up to the income that he claims of Rs.3,31,966/- per annum. A combined reading of above facts clearly shows that the Respondent is, and must be making lakhs of rupees a month. In today's time, it is not only difficult, but impossible to sustain such a lifestyle without having hoards of money. The Respondent's own statements in his cross examination show his lifestyle - from the cars he drives; to the travel; to the mutual funds he invests in. For the Respondent to claim to be earning just Rs.3,31,966/- is just not possible to believe.

53. The simple fact that he can travel, drive expensive cars, place expensive advertisements to promote his business, amongst others, and make no expenditure on his 3 children who were being raised solely by the Appellant-wife, shows his poor conduct and role as a father. For the Respondent-husband, to refuse to pay towards marriage expenses of his unmarried daughters is most unfortunate and not acceptable.

54. It is the case of the Respondent that the elder daughter of the parties Sahiba, is working in London, and is gainfully employed. Further, learned counsel for the Respondent has also claimed that younger two children are also employed and having an income. However, he has failed to substantiate the same. There is nothing on record before us to show gainful employment of the second daughter, namely, Ananya, and the son Atharv.

55. From the above narration of facts, it is evident that there is a clear mistrust between the parties and that both the Appellant and Respondent are concealing their incomes. We cannot close our eyes to the fact that both the daughters are, in fact, of marriageable age. The younger daughters' marriage is fixed, and the elder daughter will also require a corpus for her marriage. The Respondent is the father of the 3 children and has responsibility in that regard towards them. Simply stating that the

daughters are major and earning an income, without adducing how, and how much, is a non sequitur.

56. Commensurate with the status of the parties - it is also clear that the Respondent is a man of substantial means, and, as already held by us, is obligated to contribute towards marriage expenses of his daughters.

57. Each and every individual is entitled to basic resources like food, shelter, clothing, education, medical expenses and other necessities required to live a dignified life. Morally and legally, it the obligation of both the parents to provide these amenities, according to the status of life being led by them, to their children by way of maintenance.

58. For the last 11 odd years, the Appellant-wife has been providing for the children. Simply because she has done so and is presently also presumably doing so, cannot relieve the Respondent- husband from his obligations as a father.

59. Relying on observations of Jasmeet Kaur Talwar & Anr. (supra), we note that a certain amount of guesswork is required for determining the financial status of the Respondent. In view of what has been stated by us hereinabove, we direct that an amount of Rs. 35 lakhs be paid towards marriage expenses of the elder daughter, namely, Sahiba. As Sahiba is earning a certain income, she will require a lesser sum than her sister, as she herself would also be in a position to contribute to her wedding expenses.

60. Further, an amount of Rs. 50 lakhs to be paid for the marriage expenses of the younger daughter, namely, Ananya. As the younger daughter Ananya is not earning any income, and is dependent on her parents for the expenses of her marriage, that is already scheduled, she will require the sum urgently.

61. The amount of Rs. 50 lakhs, for the younger daughter Ananya, must be paid within 1 week from the date of this order, and the amounts for the other daughter Sahiba (Rs. 35 lakhs) to be paid within 6 weeks from the date of passing of this order. The said amount shall be kept by Sahiba in a fixed deposit, to be utilized at her wedding.

62. Accordingly, the present petition is allowed to the extent of granting a lump sum maintenance amount for the marriage expenses of the two daughters, as aforesaid.

63. It is unfortunate that the matrimonial dispute between the parties has also adversely impacted the relationship of the Respondent with his three children. When we interacted with the Respondent in Chamber, we observed that he carried within himself some amount of hurt and anger in relation to his daughters. During our interaction, he also claimed that he did not receive the respect that he was entitled to as a father. We could observe that his reluctance to provide for his unmarried daughters stemmed from his anger and ego, more than anything else.

64. The bond between a parent and his child, particularly between a father and his daughter, is one of the strongest bonds that any two human- beings can have. Even when this bond is weakened due to unfortunate past incidents, in our view, there is nothing to prevent the said bond being restored because, deep inside, both the daughter and the father are bound to have that natural and inherent love for each other. It only requires the layers of anger, hurt and ego to be brushed aside to expose the pure love & affection which a father and his daughter share. We sincerely hope that the Respondent and his daughters would make the required effort to restore their relationship, even if their parents have fallen apart. The Respondent should realise that he is the only person whom his daughters can look upto as their father. To have a father, and not to be able to talk to him or go to him for advice or financial or moral support and guidance, must be very painful for the two daughters. Similarly, it would be very depressing for the Respondent to have two daughters, and not to be able to spend time with them, and receive love, care and affection from them. We have no doubt that if the relationship between the parties had not soured, the Respondent would have done everything for his daughters, and would have doted on them. We are hopeful that the appellant would also play a positive role in bridging the gap between the Respondent and his daughters - who are now grown-up, and there is no reason for her to come in the way of the relationship of his daughters and their father. We, therefore, expect that as and when the daughters of the parties get married, the Respondent would happily participate in the functions, and the appellant, the children and other family members would respectfully and gracefully, with love & affection, welcome him to the functions and facilitate his participation in the functions wholeheartedly. With these words, we dispose of the present appeal.

(JASMEET SINGH) JUDGE (VIPIN SANGHI) JUDGE JANUARY 07, 2022 'ms'