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

Judgment Reserved on: 18.07.2024

% ***Judgment Pronounced on: 01.08.2024***

\+ **MAT.APP.(F.C.) 226/2018 & CM APPL. 36723/2018, CM APPL. 4245/2021, CM APPL. 51379/2022, CM APPL. 52044/2022**

..... Appellant

gh: Mr Y.P. Narula, Senior Advocate with Mr Ujas Kumar, Advocate.

..... Respondent

Through: Ms Anu Narula, Advocate.

\+ **MAT.APP.(F.C.) 120/2019**

..... Appellant

Through: Ms Anu Narula, Advocate.

versus

..... Respondent

Through: Mr Y.P. Narula, Senior Advocate with Mr Ujas Kumar, Advocate.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE AMIT BANSAL

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[Physical Hearing/Hybrid Hearing (as per request)]

AMIT BANSAL, J.

PREFACE

1. Both the appeals arise out of the same impugned judgment dated 16th August, 2018. *Via* the impugned judgment, the learned Principal Judge, Family Courts, Tis Hazari Courts, Delhi ('Family Court') disposed of an application filed by Mrs Anju Jain ('Wife') under Sections 24 and 26 of Hindu

Marriage Act, 1956 ('HMA') seeking enhancement of interim maintenance granted earlier.

2. MAT.APP.(F.C.) 226/2018, has been filed by Mr Parvin Kumar Jain ('Husband') seeking setting aside of the impugned judgment, whereas MAT.APP. (F.C.) 120/2019, has been filed by the Wife seeking enhancement of the interim maintenance granted by the Family Court.

3. The Family Court, *vide* the impugned judgment, directed the Husband to pay the following amounts:-

(i) Rs. 1,15,000/- per month as *pendente lite* maintenance to the Wife and the son of the parties from the date of filing the application for enhancement of maintenance i.e. 28th February, 2009 to 14th July, 2016, the date when the divorce petition was withdrawn by the Husband.

(ii) Rs.35,000/- per month to the son of the parties from 15th July, 2016 till the time he attains the age of 26 years or becomes financially independent, whichever is earlier. This amount shall be subject to increase by 10% after every two years starting from 28th May, 2019.

BRIEF FACTS

4. Briefly stated, the facts of the case are set out hereinafter:-

(i) The parties got married as per Hindu rites and ceremonies on 13th December, 1998 and have a son, from the wedlock, namely Aniket@ Dhruv, later changed to Dhairya ('Son'), born on 28th May, 2001.

(ii) The parties started living separately since January, 2004. From the date of separation, the Son has been residing with the Wife.

(iii) On 11th May, 2004, the Husband filed a petition under Section 13(1)(ia) of the HMA, before the Family Court, seeking divorce on the grounds of cruelty.

(iv) During the pendency of the divorce petition, on 27th May, 2004, the Wife filed an application under Section 24 of the Act seeking *pendente lite* maintenance. This application was disposed of by the Family Court *vide* order dated 20th September, 2004 directing the Husband to pay a cumulative sum of Rs.18,000/- per month *(Rs.15,000/- to the Wife and Rs. 3000/- to the Son)*.

(v) Both the parties preferred an appeal against this order before this Court. In the appeal, this sum was enhanced to Rs.20,000/- per month *(Rs.15,000/- to the Wife and Rs. 5000/- to the Son*) by this Court *vide* order dated 21st November, 2005.

(vi) On 28th February, 2009, the Wife filed the aforementioned application under Sections 24 and Section 26 of the Act for enhancement of the interim maintenance, which came to be decided by the impugned judgment. In the said application, she claimed an enhanced amount i.e. Rs. 1,45,000/- per month towards interim maintenance.

(vii) On 14th July, 2016, the Husband withdrew his divorce petition.

5. Claiming that there have been substantial changes in circumstances, the Wife filed the application for enhancement of interim maintenance before the Family Court. In the said application, the Wife submitted that the Husband's salary, perks, allowances, bonuses etc were more than Rs. 4,00,000/- per month. She further submitted that the requirements of the Wife and the Son

have increased manifold since the previous application under Section 24 of the HMA was decided.

6. During the pendency of the said application, on 17th July, 2015, the Husband made a statement before the Family Court that he had, keeping in mind the requirements of his growing Son, decided to voluntarily increase the interim maintenance to Rs.65,000/- per month (Rs. 50,000 to the Wife from the date of filing of enhancement application i.e. 28th February, 2009 and Rs 15,000 to the Son from July, 2015). He further submitted that after the main divorce petition was dismissed as withdrawn on 14th July, 2016, the Family Court became *functus officio* and therefore, no relief under Sections 24 and 26 of the HMA could be granted. Furthermore, he submitted that no maintenance can be granted to an adult male child under the provisions of Section 26 of the HMA.

FINDINGS OF THE FAMILY COURT

7. The Family Court *via* the impugned judgment dated 16th August, 2018, allowed the enhancement application filed by the Wife by holding that:-

(i) Relief in an application under Section 24 of the HMA can only be granted from the date of filing the said application i.e. on 28th February, 2009 till the date when the main petition i.e. the divorce petition was dismissed as withdrawn i.e.14th July, 2016.

(ii) Proceedings under Section 26 of the HMA are independent of the main divorce proceedings and consequently, relief under it can be granted for a period after the dismissal of the main divorce petition as well.

(iii) The Husband adopted delaying tactics and hence the enhancement

application of the wife could not be decided in a timely manner.

(iv) The Husband had been evasive in providing true details of his income and assets to the court and had concealed his real income as also his movable/immovable assets from the court.

(v) The Husband had failed in discharging his moral and legal duties to provide a just and reasonable maintenance to his Wife and Son which was commensurate with the social and economic status of the parties.

8. In sum, the Family Court held that the Wife and the Son are entitled to an enhanced maintenance in view of the increased expenditure of a growing child and as per the requirements of the Wife, commensurate with her social status. Accordingly, the Family Court directed the Husband to pay the following amounts:-

(i) Rs. 1,15,000/- per month as *pendente lite* maintenance to the Wife and the Son of the parties from the date of filing the application for enhancement of maintenance i.e. 28th February, 2009 to 14th July, 2016, the date when the divorce petition was withdrawn by the Husband.

(ii) Rs.35,000/- per month to the Son from 15th July, 2016 till the time he attains the age of 26 years or becomes financially independent, whichever is earlier. This amount shall be subject to increase by 10% after every two years starting from 28th May, 2019.

(iii) Litigation costs of Rs. 2,00,000/-.

9. Aggrieved by the impugned judgment, both sides have filed the present appeals.

10. This Court, *via* an interim order dated 27th September, 2018 in MAT.APP.(F.C.) 226/2018 filed by the Husband, stayed the impugned judgment subject to the Husband paying the Son Rs. 15,000/- per month from 1st August, 2016 to 31st December, 2017 and Rs. 25,000/- per month from 1st January, 2018, till further modification.

11. *Vide* order dated 24th April, 2019 in MAT.APP.(F.C.) 120/2019, both the appeals were directed to be listed together.

12. During the course of the hearing in these appeals, this Court, on numerous occasions, made efforts to settle the matter amicably between the parties, however, such efforts did not bear any fruit.

SUBMISSIONS OF BOTH SIDES

13. On behalf of the Husband, Mr Y.P. Narula, Senior Advocate, has made the following submissions:-

(i) The claim for interim maintenance under Sections 24 and 26 of the HMA comes to an end when the main petition itself has been disposed of. Accordingly, the Family Court could not have granted the relief under Section 26 of the HMA in the impugned judgment. Reliance in this regard has been placed on the judgment of the Supreme Court in ***Ajay Mohan and Ors.* v. *H.N. Rai and Ors***, (2008) 2 SCC 507 and judgment of Coordinate Bench in ***Akash Chadha* v. *Preeti Khanna***, 2016 SCC OnLine Del 4422.

(ii) Only minor children are entitled to interim maintenance under Section 26 of the HMA. Reliance in this regard has been placed on the judgment of Supreme Court in ***Rajnesh* v. *Neha***, (2021) 2 SCC 324. Therefore, the Family Court could not have granted

maintenance to the Son till he attains the age of 26 years.

(iii) The Wife has been residing at NP-79, Ground Floor, Pitampura and claims to pay rent to the landlady, one Mrs. Sudesh Bansal. Mrs. Sudesh Bansal had executed a registered General Power of Attorney (GPA) and an Agreement to Sell, both dated 25th June, 2009, in favour of the Wife's mother. This proves that the Wife has acquired the said rented premise *benami* in the name of her mother and any claim for rent from the Husband is illegal. The Wife has committed fraud by failing to disclose this sale transaction to the Family Court. Furthermore, the Wife has committed forgery by filing false and forged affidavits and a Rent Agreement dated 13th December, 2011.

(iv) The Husband has not hidden his income and assets from the Family Court. A careful perusal of his affidavits dated 16th January, 2016 and 11th May, 2018 filed with the Family Court would prove the same. Hence, disparaging marks made by the Family Court against his conduct were wrong and uncalled for.

(v) If a party is living in a foreign country, when granting maintenance, the expenditure incurred and the cost of living in that foreign country have to be considered. Reliance in this regard has been placed on the judgment of the Coordinate Bench in ***Ms. Bindu Chaudhary* v. *Shri Deepak Suga***, 2016 SCC OnLine Del 5423.

14. On behalf of the Wife, Ms. Anu Narula, has made the following submissions:-

(i) In her application for enhancement of interim maintenance, the Husband took repeated adjournments only with the intention to delay the proceedings.

(ii) The Husband has held coveted positions in various companies and is also the owner of a company by the name of Prasham Consultants LLP. An analysis of his affidavits filed before the Family Court would prove a sizable annual income running in crores for the period 2009-2016, as well as considerable assets.

(iii) As per the judgment of the Supreme Court in ***Anuritta Vohra* v. *Sandeep Vohra***, 2004 SCC OnLine Del 192, the Wife and the Son are entitled to at least 50% of the income of the Husband. The amount of Rs. 1,15,000/- per month as granted by the Family Court is merely 5-6% of the Husband's admitted income and hence, should be enhanced.

(iv) The Wife's rented house i.e. NP-79, Ground Floor, Pitampura was transferred to her mother by the erstwhile owner, Mrs. Sudesh Bansal in 2009 based on a mutual understanding. As per this understanding, after the one time payment made by the Wife's mother to Mrs. Sudesh Bansal, the Wife had to pay a monthly sum of Rs. 11,000/- as rent to Mrs. Sudesh Bansal, which was paid till 2016. The Wife or the Son do not have any share/title/interest in the house, which in itself is in a dilapidated condition. Hence, the Husband's submission on the aspect of the Wife making false rental claims is not accurate.

(v) The Family Court has correctly held that a child even after attaining the age of 18 years, can be entitled to maintenance till he starts working and earning or till his studies are complete. The said proposition of law is well established under Section 125 of the Criminal Procedure Code, 1973 and The Hindu Adoptions and

Maintenance Act, 1956 and should equally be applicable to proceedings under Section 26 of the HMA as well. Reliance in this regard has been placed on the judgment of this Court in ***Urvashi Aggarwal and Others*** **v.** ***Inderpaul Aggarwal***, 2021 SCC OnLine Del 4641.

15. Counsels for the parties were heard on several dates and have filed written submissions in support of their arguments.

ANALYSIS AND FINDINGS

16. We have heard the parties and perused the material on record.

17. In our view, the following issues arise for consideration in the present appeal-

I. Whether the Family Court becomes *Functus Officio* after withdrawal of the divorce petition and hence, cannot decide applications under Sections 24 and 26 of the HMA, 1955.

II. Whether maintenance under Section 26 of the HMA, 1955 can be granted to an adult child.

III. Whether the Family Court has correctly awarded interim maintenance under Section 24 of the HMA.

IV. Relief

I. Whether the Family Court becomes *Functus Officio* after withdrawal of the divorce petition and hence, cannot decide applications under Sections 24 and 26 of the HMA, 1955.

18. The Husband submits that once the main divorce petition has been withdrawn, the Family Court becomes *Functus Officio* and accordingly, cannot grant any relief in applications under Sections 24 and 26 of the HMA.

In support of this submission, the Husband has relied upon the judgment of the Supreme Court in ***Ajay Mohan*** (supra) and the judgment of the Coordinate Bench in ***Akash Chadha*** (supra).

19. The reliance on these judgments is completely misplaced. In fact, the judgment relied upon by the Husband in ***Akash Chadha*** (supra), holds that proceedings under Section 24 of the HMA have a life, independent of the main divorce proceedings. The Coordinate Bench in the said judgement notes that in cases where the wife's application under Section 24 of the HMA is pending for a long period of time and the husband decides to withdraw the main divorce petition, it would cause grave hardship to the wife, if she is not granted maintenance till the time the main petition is withdrawn.

20. We fully endorse this view. If the submission of the Husband is accepted, in order to obviate payment of interim maintenance under Section 24 of the HMA, the husband can unilaterally withdraw the divorce petition, leaving the wife without any means to maintain herself and dependent, if any. Therefore, in our view, even after the divorce petition is withdrawn, the Family Court is competent to adjudicate the application for interim maintenance from the date the said application was filed till the withdrawal of the divorce petition.

21. The reliance on the judgment in ***Ajay Mohan*** (supra) is completely untenable as the said judgment was not in the context of a matrimonial dispute.

22. In so far as Section 26 of the HMA is concerned, there is no limitation prescribed therein in terms of which the Family Court cannot grant relief or alter/modify the relief granted, after withdrawal of the main divorce petition.

This is evident from the plain language of Section 26 itself. For the sake of convenience, Section 26 of the HMA is set out below:

> "*26. Custody of children.—In any proceeding under this Act, the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may,* ***after the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made:***
> *1 [Provided that the application with respect to the maintenance and education of the minor children, pending the proceeding for obtaining such decree, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.]*"
>
> *[emphasis is ours]*

23. Therefore, in our view, the Family Court does not become *functus officio* after withdrawal of the divorce petition and it can decide applications filed under Sections 24 and 26 of the HMA, 1955 even after the said withdrawal. Significantly, in the present case, the date on which the application for enhancement was filed i.e. 28th February, 2009, the Son was less than 8 years of age. Furthermore, on the date when the impugned judgment was passed, the son was about 17 years and 3 months old. Therefore, the learned Family Court judge had, in our view, the power to rule on the application vis-à-vis the Son by taking recourse to Section 26 of the HMA.

II. Whether maintenance under Section 26 of the HMA, 1955 can be granted to an adult child.

24. In this regard, the Husband submits that provisions of Section 26 of the HMA are distinct from provisions of the Hindu Adoption and Maintenance

Act, 1956 where maintenance can be provided to an unmarried daughter, even if she attains the age of majority. It is contended that once the Son has attained the age of 18 years, the Husband is not liable to pay any maintenance in terms of Section 26 of the HMA.

25. We are unable to accept this submission. The intent of Section 26 of the HMA is to provide for maintenance, *inter alia*, for the education of the children. It is a matter of common knowledge that in the normal course, the education of the child does not get over upon the child attaining the age of 18 years. Mostly, the child would have cleared his high school (Class 12) at the age of 18 years and would be looking to join a college/ university for further studies. It is only after completion of a college/ university degree and in some cases, completing a post-graduation/ professional degree, would the child be able to secure employment. In fact, it can safely be concluded that, in today's competitive world, gainful employment may be feasible only after the child has pursued education beyond 18 years of age. It is in this context that Section 26 of the HMA provides that the Court may pass orders with respect to ***'education of minor children, consistently with their wishes, wherever possible'***. Therefore, the scope of education in Section 26 of the HMA cannot be restricted only till the time the child attains the age of 18 years.

26. A similar view was taken by a Single Bench of this Court in ***Urvashi Aggarwal*** (supra), where the court was dealing with a case arising under Section 125 of the Code of Criminal Procedure, 1973 (Cr.P.C). The court observed that a father cannot be absolved of his responsibilities to meet the education expenses of his son because the son has attained majority. Even though, the child may be a major, he may not be financially independent and capable of sustaining himself.

27. The judgment in ***Urvashi Aggarwal*** (supra) was followed by one of us [Amit Bansal, J.] in ***Sapna Paul* v. *Rohin Paul***, 2024 SCC OnLine Del 372, which was in the context of proceedings under Protection of Women from Domestic Violence Act, 2005 (DV Act). It was held that the obligation of a father towards his child does not end when the child attains majority, even though he is still pursuing his studies.

28. Pertinently, Section 125 of the Cr.P.C, like Section 26 of the HMA, also uses the expression "minor child"[1]. We do not see why a different view should be taken in respect of maintenance under Section 26 of the HMA.

29. The Husband places reliance on paragraph 25 of ***Rajnesh* v. *Neha*** (supra) which is set out below:-

> " *25. Section 26 of the HMA provides that the court may from time to time pass interim orders with respect to the custody, maintenance and education of the children*"

30. The reliance on the aforementioned paragraph is misplaced. In the said paragraph, the Supreme Court has only stated what is provided in Section 26 of HMA. There was no occasion for the Supreme Court to interpret whether Section 26 of HMA would be applicable in the case of children who have attained majority, as in ***Rajnesh* v. *Neha*** (supra), the child had not attained the age of majority.

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[1] ***125. Order for maintenance of wives, children and parents.***
(1)If any person having sufficient means neglects or refuses to maintain –
(a)his wife, unable to maintain herself, or
(b)his legitimate or illegitimate ***minor child****, whether married or not, unable to maintain itself, or*
(c)his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
(d)his father or mother, unable to maintain himself or herself,
a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:
[provisos have not been set out as not relevant for purposes of the present appeal]

31. In our considered view, a child who is pursuing his education would be entitled to maintenance under Section 26 of the HMA even after he attains the age of majority, till the time he is pursuing his education and is not financially independent.

32. In the present case, the Family Court has noted that the Son was 17 years and 3 months old at the time when the impugned judgment was passed and was studying in Class 11. The Family Court further goes on to note that the Son has a good academic record and is desirous of pursuing higher studies and wants to become a software engineer. As per the written submissions filed on behalf of the wife, the Son is currently pursuing engineering from IP University in Delhi.

33. Therefore, the Family Court, taking into account the education and other related expenses likely to be incurred by the Son, awarded him an amount of Rs. 35,000/- per month till the time he is 26 years of age or becomes financially independent, whichever is earlier. Significantly, in ***Rajnesh* v. *Neha*** (supra), the Supreme Court observed that the maintenance amount should take into account the child's food, clothing, residence, extra coaching or any other vocational training courses to complement the basic education. The operative part of the directions of the Family Court are set out below:

> "*46.That being the case, the child has now turned 17 years and presently studying in 11th standard, having opted for non-medical course, as revealed to this Court during the conciliation proceeding. The child has an excellent track record in his studies and, he is desirous of pursing higher studies and wants to become a software engineer, it is interesting to note that during the conciliation proceedings, the non-applicant/ petitioner husband/ father had some quality time with the child providing him counselling about his higher studies and career in life, but the non-applicant/ petitioner husband was non-committal to secure his future. Therefore,* ***it would be fair to assume that the child from 11th standard onwards would***

require funds not only tuition fee/ private tuition(s) or course specific tuition(s), but also have reasonable requirement of laptop, mobile phone, Internet, apart from bearing the cost of decent clothing, spending on entertainment, sports and extra curricular activities. In other words, the child needs financial security to pursue his hobbies*.*

*47.**To my mind, a sum of Rs. 35,000/- per month shall be - just and fair maintenance that could be provided to the child to ensure financial security to pursue higher academic course till such time he attains the age of 26 years or becomes financially independent, whichever is earlier**. Therefore, the application dated 28.02.2009 in so far as it pertains to relief u/s 26 of the Act is disposed of with the direction that the non - applicant/ petitioner **husband/ father shall pay a sum of Rs. 35,000/- per month to the child from the date of dismissal of the petition, i.e., 15.07.2016 till such time he attains the age of 26 years or becomes financial independent, whichever is earlier. The amount of maintenance shall be subject to increase by 10% after every two years starting from the next date of birth of the child, i.e., 28th May 2019***."

[emphasis is ours]

34. In view of the discussion above, no interference is called for with the aforesaid directions contained in the impugned judgment.

III. Whether the Family Court has correctly awarded interim maintenance under Section 24 of the HMA

35. In ***Rajnesh* v. *Neha*** (supra), the Supreme Court has elucidated the factors which are to be considered by the Family Court, whilst deciding an application for interim maintenance [Reference in this regard may be made to paragraphs 77 to 81 of ***Rajnesh v. Neha*** (supra)] which are set out below:-

i. Status of parties

ii. Reasonable needs of the wife and dependent children

iii. Whether wife is educated and professionally qualified. It would not matter if the wife is educated but is not employed

iv. Whether wife has any independent source of income and if so, whether the said income is sufficient to enable her to maintain same standard of life

v. Reasonable cost of litigation.

vi. From the income of the husband, reasonable expenses for his own maintenance and dependent family members would have to be considered.

vii. Court would have to weigh in the effect of inflation and the high cost of living.

36. The Supreme Court concluded that the aforesaid factors would have to be weighed in while determining interim maintenance. The maintenance to be awarded to the wife should be commensurate with the husband's wherewithal. The quantification should be done in a manner that the wife should be able to maintain herself comfortably.

37. After carrying out an in-depth analysis of the Husband's income based on various income affidavits filed by the Husband and the ITRs and other documents filed by the Wife, the Family Court concluded as under: -

> "*28. Now, a cumulative reading of the four income affidavits which have filed by the non applicant/ petitioner husband dated 26.05.2012, 17.01.2013, 17.07.2015 and lastly on 16.01.2016 and the ITRs for the relevant years would admittedly bring out the following status:*

SI. No.	Place of Employment	Assessment Year	Monthly Income	Annual Income*
1.	Standard Chartered Bank Connaught Circle (Director) 2001-2009	2007-2008 2008-2009 2009-2010	3,00,000/-	1,08,41,462/- 2,11,86,092/- 2,50,00,000/-

2.	Knowledge Infrastructure System Pvt. Ltd. (April 2010)	2010-2011	4,01,528/-	98,50,393/-
3.	Lodha Group Mumbai, (Sr. Vice President) (April 2011)	2011-2012 2012-2013	4,77,000/-	84,84,695/- 72,17,460/-
4.	Sare Homes Gurgaon (Director) 2012-2013	2013-2014	5,00,000/-	1,63,54,133/-
5.	Indus Ind Bank Gurgaon (2014)	2014-2015	6,00,000/-	85,57,383/-
6.	Mauritius Banyan Tree Bank (Oct. 2014-June 2016)	2015-2016	5,77,783/-	More than Rs.80 lakhs

**** Gross Total Income***

*29.**It must be pointed out that the said compilation by the Ld. Counsel for the applicant respondent has not been challenged by Ld. Counsel for the applicant/ petitioner husband**. Perusal of the record shows that the petitioner husband moved an application dated 27.06.2016 to the effect that his services with Banyan Tree Bank, Mauritius has been terminated. **However, it was urged on behalf of applicant/respondent wife that the petitioner husband has opened his own Limited Liability Partnership firm in the name "Prashum Consultant", which is not refuted by the petitioner husband, but at the same time he has not cared to file any documents concerning his present status as a director or partner of any firm or his latest ITRs or income position. In the absence of such relevant business and financial details, this court is constrained to refer to the income affidavit dated 07.01.2016 filed by him on the record. He has deposed in the affidavit that his monthly income was Rs. 5,77,783/- while monthly expenditure Rs. 4,95,612/-. It may also be noted that salary income of the non-applicant/ petitioner husband indicated in the affidavit is de hors of the financial benefits in the nature of house rent allowances, car, bonus etc. The income affidavit also reveals interest income on bank and deposits at the rate of Rs. 25,000/- per annum; interest on PF Rs. 1,75,000/- per annum; dividend income of Rs. 5 lakhs p.a. (variable) besides pension income at the rate of Rs. 8,422/- per month.** *In 'Part-V' under the head "Statement of Expenditure" of his affidavit dated 07.01.2016 there is no liability towards discharge of*

any kind of loans except of credit card payments. ***In 'Part-VI' under the head "Statement of Assets" he has disclosed about two properties one at J.P. Green, Noida and other at Richmand Park, Phase-4, DLF, Gurgaon, Haryana besides operation of as many as 8 bank accounts and investments in securities/funds to the extent of Rs. 1,50,38,848/-.*** *It also shows various investments in life insurance policies. In order to demonstrate the financial wherewithals of the non-applicant/ petitioner husband, the applicant/ respondent wife placed on record Form 26AS filed under Section 203 AA of the Income Tax, Act which inter alia vide 'Part - F' shows purchase of immovable property by the non-applicant/petitioner husband suggesting that* ***Ramaprastha Sare Reality Pvt. Ltd.*** *deducted TDS amount of Rs. 2,843/- for transaction of Rs. 28,14,241/- on 08.08.2013, in the assessment year 2014-2015.* ***The applicant/respondent wife has also placed on record 'Form 26AS' for the assessment 2010-2011 showing in 'Part -E' details of AIR transaction in as many as 7 different mutual funds for Rs. 1.1 Crores, Rs. 1.25 Crores, Rs. 1.3 Crores, Rs. 90 Lakhs, Rs. 50 Lakhs, Rs. 25.7 Lakhs and Rs. 1.15 Crores by the non-applicant/ petitioner husband.*** *Further, the ITR for the assessment year 2014-2015 of the non- applicant/ petitioner husband shows* ***income from house property by way of rent in respect of property no., F-146, Richmond Park, DLF City, Phase - IV****."*

[emphasis is ours]

38. From a bare perusal of the Husband's Income Tax Returns for the Assessment Years 2007-2008 to 2015-2016 and the income affidavits, it would be safe to conclude that Husband's monthly income during that span was well over Rs. 4,00,000/- per month, as has been contended by the Wife in her enhancement application.

39. The Husband contends that since he was living in Mauritius, his living expenses were also higher and that should have been factored by the Family Court. From the record, it appears that the Husband shifted to Mauritius only in August, 2014. Before that, he continued to work in India. Taking a holistic view, we find that even if we were to consider the fact that the Husband was employed in Mauritius starting from the financial year 2014-2015 and his

expenses must be considered as such, we find that he was still sufficiently remunerated and had assets generating income to provide a meaningful maintenance to the Wife and the Son.

A. Concealment by the Husband of his income and assets before the Family Court

40. The Family Court in the impugned judgment notes that the Husband has throughout the proceedings, concealed his real income as well as his movable and immovable properties in order to hoodwink the process of law. In this regard, reference may be made to paragraph 31 of the impugned judgment which is set out below:

> "*31.The Ld. Counsel for the applicant/ respondent wife has been able to ex facie demonstrate that the non-applicant/ petitioner husband was working with Standard Chartered Bank, though he resigned on 03.04.2010, he had joined in the Knowledge Infrastructure Private Ltd. w.e.f. 08.04.2010, but when the case was listed for arguments on the instant application on 12.07.2011, he intimated that he has changed his job and joined Lodha Group of Real Estate, and then on 29.10.2013, he resigned from Ramaprastha Sare Homes Ltd. and he then joined IndusInd Bank on 04.02.2014, and 12.06.2014 joined Banyan Tree Bank, Mauritius. Incidentally, the non-applicant/ petitioner husband* ***did not file the statement of bank accounts with his 1st, 2nd and 3rd affidavit and as rightly pointed though he came out with the information that he had five new accounts but he selectively filed the statement of banks accounts for a short period, and at the same time withheld the details about the operation of other bank account****s. Anyhow, during the course of arguments I have been taken through the entries in the bank accounts that would show transactions in substantial amount running into thousands or Lakhs of rupees.* ***However, as per form 26AS filed along with ITR form 14-15 it appears that there is another property bought by the non-applicant/ petitioner husband viz. F-51, Richmond Park, Gurgaon, and the Form 26AS filed by the non-applicant/petitioner husband also shows that he was holding mutual funds to the tune of Rs. 5.19 crores in the year 2015-2016****."*
>
> *[emphasis is ours]*

41. The Husband disputes the aforesaid finding on concealment. On behalf of the Husband, it has been strenuously urged that the Family Court though takes note of the affidavit dated 11th May, 2018 filed by the Husband however, it does not deal with the same. We have carefully gone through the said affidavit. In our view, the said affidavit was yet another attempt on the part of the Husband to mislead the Family Court and conceal particulars of his income as well as assets.

42. Illustratively, we have dealt with at least three instances where the contents of the affidavit are in complete variance with the documents on record.

43. Firstly, in paragraph 7 of the affidavit, the Husband has denied that he possesses investments in mutual funds to the tune of Rs.5.10 crores. In this behalf, reference may be made to paragraph 7 of the said affidavit which is set out below:

> "*7. It is therefore, totally false to suggest that I had* ***at any given time*** *any investments of Rs. 5.10 crores as argued by the counsel for the Respondent*"
>
> *[emphasis is ours]*

43.1 This averment is contradicted by the Statutory Form-26AS of the Husband for the financial year 2009-10 (AY 2010-11), placed on record by the Wife before the Family Court, in which it is shown that the Husband has purchased mutual funds totalling Rs.5.10 crores in the said financial year. Though the Husband contends that he had, in fact, sold existing mutual funds to purchase fresh mutual funds and therefore it would be wrong to say he held the said mutual funds, he has not filed any statements or other documents in support of the same. Therefore, we would tend to agree with the findings of the Family Court that the Husband was holding mutual funds worth Rs. 5.10

crores in the year 2009-2010, as is reflected in his Form 26AS.

44. Secondly, in paragraph 11 of the affidavit, the Husband has stated that he does not own any property in Richmond Park, Gurgaon. In this behalf, reference may be made to paragraph 11 of the said affidavit which is set out below:

> "*11. I further submit* ***that I do not own any property bearing F – 51, Richmond Park, Gurgaon or any other property in the said locality*** *and any submission of the Respondent in this regard is false.*"
>
> *[emphasis is ours]*

44.1 In his Income Tax Returns for the Assessment Year 2014-15, the Husband has specifically shown that he co-owns a property i.e. F-146 in Richmond Park, Gurgaon and he is drawing rental income from the same. This is in stark contrast to his statement in his affidavit dated 11th May, 2018 wherein, he has denied owning any property in Richmond Park, Gurgaon. Further bank statements of the Husband placed on record by the Wife show that the Husband has been paying regular maintenance charges in respect of the said property from April, 2014.

45. Thirdly, in paragraph 13 of the affidavit, the Husband submits that he has no business interest in Prasham Consultants LLP. In this behalf, reference may be made to paragraph 13 of the said affidavit which is set out below:

> "*13. I also deny photocopies of the document filed at Page No. 13-18 by the Respondent.* ***I specifically deny that I have any business interest in Prasham Consultants LLP*** *and my affidavit is correct and it honestly discloses all my assets and income."*
>
> *[emphasis is ours]*

45.1 The Wife has filed documents to show that Prasham Consultants LLP was founded by the Husband along with another partner in the year 2015. The Husband continued to be a partner in the said LLP till he was replaced by his

father as a director/partner in the firm starting from 1st January, 2016.

45.2 Significantly, the Husband has not bothered to disclose his income from Prasham Consultants LLP before the Family Court. The registered address of Prasham Consultants LLP is shown to be F-146, Richmond Park, Gurgaon in which, as noted above, the Husband has denied having any ownership interest.

46. In his affidavit dated 16th January, 2016, the Husband claims he is earning in Mauritius Dollars and his monthly income in Indian currency would be to the tune of Rs.5,77,783/-, however, he claims his monthly expenditure in Indian currency would be Rs.4,95,612/-. In justification of this expenditure, he submits that he is incurring an expense of Rs.1,00,000/- per month towards the maintenance of his old parents who are leading a retired life. The Wife has placed on record the Husband's bank account statements for the years 2019-2021, which show remittances from his father's account to his account, cumulatively of more than Rs. 1 crore. Clearly, a person who is making remittances of such large sums to his son, would not require any maintenance. This is a clear instance of the Husband seeking to inflate his expenses so as to reduce the maintenance payable to the Wife.

47. On behalf of the Husband, it has been vehemently argued that it is the Wife who has filed false affidavits before this Court to the effect that she lives in a rented house and is paying rent on a regular basis. It is further alleged that the Wife has filed a forged Rent Agreement to claim that she is paying monthly rent to one Ms Sudesh Bansal. It is submitted that the Wife has failed to disclose that the house in which she lives has been transferred by Ms Sudesh Bansal in favour of the Wife's mother *vide* registered General Power of Attorney and Agreement to Sell dated 25th June, 2009. On the basis of the

aforesaid averments, an application has been filed by the Husband under Section 340 of the Cr.P.C before the Family Court, which is yet to be decided.

48. In response to the aforesaid averments, the Wife has submitted that in the year 2009, they shifted to NP-79, Ground Floor, Pitampura for which, she was paying a rent of Rs.11,000/- per month and a further sum of Rs.5,000/- towards utilities. In the year 2009, without her knowledge, her mother purchased the aforesaid property from its owner, Ms Sudesh Bansal by making a downpayment of Rs.4,50,000/- in the year 2009. In lieu of the remaining sale consideration, the wife continued to make rental payments of Rs. 11,000/- every month.

49. In our view, the explanation offered by the Wife is plausible. A perusal of the Rent Agreement dated 13th December, 2011 shows that the Wife was paying rent of Rs.11,000/- per month. It is not the case of the Husband that the Wife owns the said property or that she has paid any amount towards the purchase of the said property. There is nothing placed on record which would have us believe that what was apparent was not real. The Husband, in our opinion, is seeking to muddy the waters. The Husband's concealments have been alluded to above. The Husband's contentions on this count are, therefore, rejected. In our opinion, this cannot be a ground to deny the lawful maintenance to the Wife.

50. It must be emphasized that the discussion above leaves no doubt in our minds that the Husband has grossly concealed the real income as well as his movable and immovable assets in order to avoid paying the rightful amount of maintenance to the wife. The Family Court has correctly returned findings with regard to the earnings of the husband as well as attempts on the part of the Husband to conceal his real income.

B. Dilatory tactics by the Husband and non-compliance of the Family Court's Orders

51. The Family Court has also taken note in the impugned judgment that the Husband has resorted to dilatory tactics which have resulted in enormous delay in adjudication of the enhancement application filed by the Wife, thereby resulting in gross miscarriage of justice. The relevant observations of the Family Court are set out hereinbelow:-

> "*3.**Reverting to the instant case, there is no iota of doubt in my mind that the dilatory tactics adopted by the non-applicant/ petitioner husband has resulted in a gross miscarriage of justice, and therefore, the issues arising in the instant case must be addressed to do substantial justice to the victims viz. the applicant wife and their child**……"*
>
> *XXX XXX XXX. XXX*
>
> *11. Per contra Ms. Anu Narula, Ld. Counsel for the respondent wife strenuously urged that at the time of passing of order for pendente lite maintenance @Rs.l8,000/- per month vide order dated 20.09.2004 the salary income of the petitioner husband was Rs.49,090/- per month whereas in the year 2009 his net salary income went up to Rs.2,30,000/- approximately (gross salary Rs.4,05,000/- approximately) besides the fact that he was also entitled to bonus and other high perks and allowances. Ld. Counsel also pointed out that the non-applicant / petitioner husband in his reply to the instant application did not care to give any details about his salary income, perks, allowances, bonuses etc., as well as properties owned by him, concealing that his widowed sister was gainfully employed being a teacher and his father has been deriving pensionary benefits. It was pointed out that since he failed to file his salary certificate, the Court was time and again constrained to pass directions for filing of relevant documents. **Ld. counsel took me through the order sheets on the judicial record and it was pointed out that the Court vide order dated 22.05.2009 directed him to file his salary certificate besides form 16A and details of benefits enjoyed under the bonus scheme, but in compliance thereof the non-applicant petitioner husband merely filed a computer print out of the salary not attested by his employer and he bluntly refused to produce "Form no. 16A" and other documents concerning his salary condition, and this propelled the applicant / respondent wife to file another application on 07.08.2009 for production of certain***

> ***documents viz., attested salary slip, IT returns for the last three years and increment letter besides details about perks and allowances***."
>
> *[emphasis is ours]*

52. In the present case, the application for enhancement of interim maintenance was filed by the Wife on 28th February, 2009 and the same came to be decided *via* impugned judgment on 16th August, 2018, after a delay of more than 9 years. The effect of the delay is that the Wife and the Son have been denied what was rightfully due to them for an inordinate time. This delay has caused grave prejudice to the Wife and the Son as they have been denied the rightful amount of maintenance due to them as they did.

53. It is also a matter of record that during the pendency of the enhancement application, the Wife was not employed. She filed an income affidavit stating that she had no income of her own and was dependent on her parental family for her survival and that of her Son. The relevant observations of the Family Court have been cited below-

> "***32. On the other hand, there is virtually no challenge to the income affidavit of the applicant/ petitioner wife that she is unemployed and solely dependent upon her parental family for her survival and that of her son****, having no movable and immovable properties in her name, not enjoying any luxurious life style, and it is also stares on the face of record that the applicant/ petitioner husband is paying a meagre sum of Rs.15,000/- for the education of the child*."
>
> *[emphasis is ours]*

C. Appeal filed by the Wife seeking enhancement of interim maintenance [MAT.APP.(F.C.) 120/2019]

54. Wife, in her appeal, submits that the maintenance awarded by the Family Court is on the lower side taking into account the earnings of the Husband and therefore, the interim maintenance should be suitably enhanced,

though no figure has been provided by the Wife, either in her appeal or in any of her submissions.

55. The application for enhancement was filed by the Wife on 28th February, 2009 seeking total maintenance of Rs.1,45,000/- per month. The Wife submits that the aforesaid amount was claimed by her on a conservative basis as at that point in time, she was not aware of the real earnings of her Husband. In the enhancement application, the Wife has averred that the Husband is earning *'more than Rs,4,00,000/- per month at present'*. It was only during the course of hearing of the said application that it came to light that the income of the Husband is far in excess of the aforesaid amount.

56. Analysis of the income of the Husband, as done above, would show that his earnings are not significantly higher than the estimate of Rs. 4,00,000/-, as stated by Wife in her application.

57. Taking a holistic view, in our considered view, the amounts claimed by the Wife in her enhancement application totalling Rs.1,45,000/- per month seems to be just and reasonable taking into account the financial position of the Husband and the fact that the Wife is unemployed.

58. It is also an undisputed position that with the passage of time, the real value of the Rupee depreciates. The Supreme Court in ***Rajnesh* v. *Neha*** (supra) has also held that inflation as well as high costs of living will have to be considered whilst granting maintenance. The relevant portion is set out below:-

> "*80. On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid.* ***The court must have due regard to the standard of living***

> ***<u>of the husband, as well as the spiralling inflation rates and high costs of living.</u>*** *The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able-bodied and has educational qualifications*."

59. In the present case, the enhancement application was filed by the Wife on 28th February, 2009 and was decided only on 16th August, 2018. The Family Court holds that this delay was on account of dilatory tactics adopted by the Husband. If the enhanced sum of maintenance had been awarded to the Wife when the enhancement application was filed or soon thereafter, the amount would have had a much greater purchasing power and would have made a significant difference to the living standards of the Wife and minor Son. Therefore, in our view, it is only fair if interest is awarded on the amount of shortfall.

60. It is submitted on behalf of the Wife that she and her Son have initiated proceedings under Section 125 of the Cr.P.C on 23rd September, 2020. The Wife has placed on record the Husband's affidavit of income filed in proceedings under Section 125 of the Cr.P.C. to demonstrate that even as on date, the Husband is gainfully employed in Mauritius and drawing a handsome salary.

61. Since in these proceedings, we are only concerned with the correctness of the impugned judgment of the Family Court which dealt with enhancement of maintenance under Sections 24 and 26 of the HMA for the period 2009 to 2016, we are not delving into the aforesaid issues. For the purposes of these appeals, we have only considered Husband's income for the years 2009 to 2016.

IV. Relief

62. In view of the discussion above, both the appeals are disposed of in the following terms:-

i. MAT. APP. (F.C) 226/2018 filed by the Husband is dismissed, along with all pending applications, along with costs of Rs. 1,00,000/-.

ii. MAT.APP.(F.C) 120/2019 filed by the Wife is allowed to the extent that the interim maintenance granted to the Wife under Section 24 of the HMA is enhanced from Rs.1,15,000/- to Rs.1,45,000/- per month from the date of filing of enhancement application i.e. 28th February, 2009 till the date of withdrawal of divorce petition by the Husband i.e. 14th July, 2016.

iii. All amounts paid by the Husband to the Wife and the Son till date shall be duly adjusted.

iv. The Husband shall also be liable to pay interest at the rate of 12% per annum towards the shortfall in the maintenance amount for the concerned period. The interest shall be calculated on the amount of deficit from the time it became due in a particular month and till the time it is paid.

v. Based on the aforesaid, the arrears of maintenance to both the Wife and the Son, along with the interest, shall be paid within a period of eight (8) weeks from today.

vi. We make it clear that the observations made herein above would not have any bearing on the proceedings under Section 125 of the Cr.P.C. initiated by the Wife and Son and which are pending before the Family Court, Rohini. We make it clear that the

Family Court will adjudicate the said proceedings without being burdened with any of the findings made herein.

AMIT BANSAL
(JUDGE)

RAJIV SHAKDHER
(JUDGE)

AUGUST 01, 2024
rt/ds