

**R O vs.s**

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**SooperKanoon Citation :** [sooperkanoon.com/1220907](http://sooperkanoon.com/1220907)

**Court :** Delhi

**Decided On :** Jan-25-2019

**Appellant :** R O

**Respondent :** S

**Judgement :**

§~31 \* + S CORAM: IN THE HIGH COURT OF DELHI AT NEW DELHI R O Date of Decision:

25. 01.2019 MAT.APP.(F.C.) 25/2019 ..... Appellant Through Mr. Swastik Singh, Advocate. versus Through ..... Respondent HON'BLE MR. JUSTICE G.S.SISTANI HON'BLE MS. JUSTICE JYOTI SINGH G.S.SISTANI, J (ORAL) CM APPL. 3853/2018 (exemption) 1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of. CM APPL. 3854/2018 (delay in re-filing the present appeal) 3. This is an application filed by appellant seeking condonation of five days delay in re-filing the present appeal.

4. For the reasons stated in the application, the delay in re-filing the present appeal is condoned.

5. The application stands disposed of. MAT.APP.(F.C.) 25/2019 6. The challenge in this appeal is to an order passed by the Family Court MAT. APP (F.C.) No.25/2019 Page 1 of 6 dated 01.05.2018, on an application filed by respondent/wife under section 24 of the Hindu Marriage Act. In this case, marriage

between the parties was solemnized on 28.11.2013. A daughter was born out of their wedlock on 16.04.2015, who is in the care and custody of the respondent/wife. The Family Court has assessed the income of the appellant at Rs. 17,604/-, keeping the minimum wage index of a graduate in mind.

7. The learned counsel for the appellant submits that the case of the appellant before the Family Court was that he was not working and thus no maintenance could have been fixed. It is also contended that the respondent is working as a Constable in Delhi Police and is earning Rs. 34,000/- per month as salary and thus no order for maintenance could have been passed.

8. Attention of the court is also drawn to an appointment letter dated 23.10.2017 filed on record to show that he was offered a salary of Rs. 9,000/- per month.

9. Attention of the court is also drawn to two judgments of a Single Judge of this court. In case of Ritu Raj Kant Vs. Anita (2009) ILR II Delhi 242, Additional District Judge had fixed maintenance of Rs. 1500/- per month on the ground that husband was an able bodied person. The Single Judge opined that in this country there is no job guarantee given by the Government to every able bodied person and many able bodied person were left jobless. Another judgment relied MAT. APP (F.C.) No.25/2019 Page 2 of 6 10. upon, was by the same single Judge reported as ILR (2009) II Delhi 246 Manish Kumar Vs. Mrs. Pratibha. Relevant para is as follows:-

"5. From the perusal of Section 24, it is abundantly clear that the object and intent of this Section is to enable the husband or the wife, as the case may be, who has no independent source of income for his or her support and necessary expense of proceedings under the Act to obtain maintenance expenses pendent lite so that the proceedings may be continued without any hardships on his or her part. The benefits granted under this Section are only temporary in nature and there are other provisions of law where a wife, who is not able to maintain herself, can claim maintenance/permanent alimony from the husband e.g. Section 25 of HMA or under provisions of Hindu Adoption and Maintenance Act. The provisions of this Section are not meant for equalizing the income of wife with that of husband but are meant to see that where divorce or other proceedings are filed, either of the party should not suffer because of paucity of source of income and the Court

should pass an order even during the pendency of such a petition, for maintenance and litigation expenses. Where a wife has no income or is without any support for maintaining herself; the Court has to pass an order considering the income and living status of the husband. However, where the wife and her husband both are earning and both are earning and both are having good salary, merely because there is some salary difference, an order is not required to be passed under Section 24 of HMA. We have heard the learned counsel for appellant and also examined the order passed by the learned Family Court. The case set up by the respondent before the Family Court was that the husband is a man of means and has a flourishing business running many companies under the name and style of M/s. Oswal Enterprises, dealing in all kinds of Optical, Raw Material and Cerium Oxide Glass Polishing, powder Glass Chemicals, situated at South-West Delhi, Nangloi, earning Rs. MAT. APP (F.C.) No.25/2019 Page 3 of 6 1,50,000/- per month, besides having property and leading a luxurious life and is a well qualified person. As per the income affidavit filed, it was admitted that the appellant/husband is an MBA but claimed not to be working. In this backdrop, the Family Court has held that since there was no evidence on record regarding the income of the appellant/husband, she was left with no option but to decide the amount based on minimum wages of a graduate which was assessed at Rs. 17,604/- and maintenance was fixed at Rs. 8,800/- for the wife and the minor daughter.

11. The learned counsel for appellant has submitted before us that even this amount is far in excess, as he is earning only Rs. 9,000/- per month. The copy of the Appointment Letter has been relied upon, which we reproduce below:-

"Appointment Letter To: RAVINDER OSWAL Adhaar No.:

78046. 346697 On behalf of ROYAL INDUSTRIES, we here by inform you that you are appointed as FIELD SUPERVISOR in our industry. Details as follows:  
Position: Field Supervisor Monthly Salary:

9000. INR Annual Bonus: Based on your performance In the best interest of ROYAL INDUSTRIES, we will need your confirmation immediately. You are requested to join your duties latest by 25th October, 2017. We are looking forward

to you being a part of our team. For ROYAL INDUSTRIES MAT. APP (F.C.) No.25/2019 Page 4 of 6 Prop. PROPRIETOR12 It is no doubt correct that in family matters normally spouses do not disclose their correct income and the courts are left with guess work, which aspect has even been recognised by the Honble Supreme Court of India in Jasbir Kaur Sehgal Vs. District Judge, Dehradun & Ors. reported as (1997) 7 SCC 7 13. However, we find in this case that approach of the learned Family Court to be completely fallacious and simply following a shortcut in assessing the income of the husband based on the minimum wage of a graduate, when the appellant/husband himself has disclosed that he is an MBA, is not acceptable.

14. We also find that the affidavit filed by the appellant, disclosing his income to be incomplete as most of the columns are left blank. It is also shown that the appellant is residing with his friend which we find to be rather strange. Prima-facie it appears that appellant has made every effort to mislead the Family Court and not disclose the correct and true facts. It is admitted that during the pendency of the matter, the appointment letter was not filed before the Family Court, but annexed alongwith the review petition which was filed and in fact we are informed that two review petitions were filed.

15. In the above backdrop, we direct the presence of the respondent in court on 18.02.2019.

16. We also issue notice to M/s. Royal Industries and direct them to produce the original salary register from the year 2017 onwards in this court. MAT. APP (F.C.) No.25/2019 Page 5 of 6 17. List for further proceedings on 18th February, 2019.

18. The order passed will be placed in the file of the Family Court. We are informed that appellant is present in court and we deem it appropriate to record his statement which we have separately recorded and also direct the appellant to remain present in court on the next date of hearing. G.S.SISTANI, J JYOTI SINGH, J JANUARY 25 2019 savita MAT. APP (F.C.) No.25/2019 Page 6 of 6