

Harminder Kaur Vs. Sukhwinder Singh

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Court : Delhi

Decided On : Jan-07-2002

Reported in : 2002VIAD(Delhi)797; 97(2002)DLT863; II(2002)DMC114; 2002(62)DRJ742

Judge : S.N. Kapoor, J.

Acts : Evidence Act; [Constitution of India](#) - Articles 14 and 16

Appeal No. : CR No. 1143/2000 and CMs 2850-51/2000

Appellant : Harminder Kaur

Respondent : Sukhwinder Singh

Advocate for Def. : Nemo

Advocate for Pet/Ap. : Vandana Kahlon, Adv

Judgement :

S.N. Kapoor, J.

1. Heard.

2. In this case, the learned trial Court has formed an opinion that the respondent Sukhwinder Singh was earlier running a business in the name of Typographical Computers at J-3/242, Ground Floor, DDA Flats, Kalkaji, New Delhi and thereafter

it appears that same concern is converted into Graphitech Creations by Sukhwinder Singh as is evident from the photocopies of the visiting card of the petitioner and as is further evident from the photographs at pages 25 and 26 of the file. The respondent had not appeared despite service. In such circumstances, learned counsel appearing on behalf of the petitioner relies upon the judgment of the Calcutta High Court in Chitra Sengupta v. Dhruva Jyoti Sengupta, 1987 Matrimonial Law Reporter 306, in support of her contention that the income of the husband being within his special knowledge, the husband should have disclosed his true and correct income. His failure to do so without giving good reasons entitles the Court to presume against him and accept the allegations of wife as to amount of his income. As far as drawing adverse inference and reason to presume against the husband is concerned, since that aspect is based on 106 of the Indian Evidence Act, such an adverse inference can certainly be drawn. But this Court has some reservation about accepting the proposition that whatever estranged wife states with or without rational basis should be accepted as gospel truth. One cannot be oblivious to the human failing of an estranged wife to exaggerate income of her estranged husband to extract as much as possible due to ever increasing lac of sense of security. Every Court is supposed to be circumspect to ensure that unconsciously by any such order the Court is not forcing one or the other party to the extremes. Consequently, this Court is supposed to have its own estimate about the income of the husband in given circumstances in absence of any definite basis provided by the wife. Learned counsel for the petitioner has very rightly conceded that the estimate is only on the basis of information which she could gather from the relations. I think this hearsay basis cannot help the petitioner for the purpose of accepting that income of the husband is Rs. 40,000/- per month. However, since the respondent could do both kinds of businesses, viz. M/s. Typographical Computers for using it for the purpose of preparing and drafting letters as well as using M/s. Graphitech Creations for creative work, one has to estimate his income @ Rs. 200/- per day so far as M/s. Typographical Computers is concerned and at the same time income of M/s. Graphitech Creations @ Rs. 300/- per day. Thus, the income for 24 days would not be less than Rs. 12,000/- per month. One could not be oblivious to the fact that equal status has been given to Indian women under Articles 14 and 16 of the Constitution. The petitioner has to

live according to the status of her husband along with the child of the parties.

3. In the aforesaid perspective, income has to be equitably apportioned for maintenance of wife and the child. If we divide income of the respondent i.e. Rs. 12,000/- in five units, two units for adults and one unit for young child, then the wife is supposed to get maintenance @ Rs. 4,800/- per month and the child is also supposed to get Rs. 2,400/- per month. In all, the petitioner must get Rs. 7,200/- per month as maintenance. This figure may be rounded off to Rs. 7,000/- keeping some margin for extra expenses of an earning husband. The petition is accordingly allowed and the amount of maintenance is enhanced from Rs. 2,000/- per month to Rs. 7,000/- per month with effect from the date of the application. Litigation expenses are also increased from Rs. 2,500/- to Rs. 5,000/-.

4. The petition is disposal of accordingly.

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