

IN THE COURT OF Ms. REKHA RANI
DISTRICT & SESSIONS JUDGE (WEST) : DELHI

CA No. 04/2016
Unique ID No. 02401R0020392016

Rahul Abbey
S/o. Sh. Vinod Kumar Abbey
R/o. B-125, first Floor, Shivalik
Malviya Nagar, New Delhi. . . . Appellant

Versus

Smt. Summi
W/o. Sh. Rahul Abbey
D/o. Sh. Surinder Kumar Jaidka
R/o Flat No. 266, First Floor
Rajouri Apartments, Opp. Govt. Press
Mayapuri, New Delhi. . . . Respondent

Date of filing Appeal	:	12.01.2016
Date of Reserving Order	:	18.02.2016
Date of judgment	:	18.02.2016

AND

CA No. 05/2016
Unique case ID No. 02401R0023812016

Summi
R/o Flat No. 266, First Floor
Rajouri Apartments, Opp. Govt. Press
Mayapuri, New Delhi. . . . Appellant

versus

1. Rahul Abbey (Husband)
S/o. Shri Vinod Kumar Abbey

2. Shri Vinod Kumar Abbey (Father-in-law)

3. Smt. Anita Abbey (Mother-in-law)

All R/o. B-125, first Floor, Shivalik

Malviya Nagar, New Delhi.

. Respondents

Date of filing Appeal : 13.01.2016

Date of Reserving Order : 18.02.2016

Date of judgment : 18.02.2016

JUDGMENT

1. Vide this common judgment, I shall dispose off the aforesaid two appeals i.e. CA No.04/16 & CA No.05/16 both preferred under Section 29 of Protection of Women from Domestic Violence Act, 2005 (in short, 'the Act') against order dated 28.11.2015, passed by Ms.Vandana, Ld. MM (Mahila Court-01), West District in CC No.186/1/14 titled Summi vs. Rahul Abbey & Ors. vide which Ld. MM (Mahila Court-01), West granted maintenance of Rs.7,500/- per month to Smt. Summi (hereinafter referred as the 'complainant') to be payable by Rahul Abbey (hereinafter referred as 'respondent') upto 10th of each English calender month from the date of filing of the application till further orders.

2. The impugned order has been challenged by the respondent in appeal bearing CA No. 04/16 interalia on the following grounds:-

- that Id. Trial Court has wrongly assessed his financial status and that he is not able to earn anything now;
- that Id. Trial Court failed to appreciate that the complainant did not approach the Court with clean hands; and
- that in view of judgments in *Satish Khosla vs. Eli Lilly Ranbaxy Ltd.*, 1998 (71) DLT 1 DHC and in *Sanjay Bhardwaj vs. Ors. vs. State & Anr.*, 2010 (118) DRJ 385, complainant is not entitled to claim any maintenance from the respondent being herself well qualified, working and earning.

3. The impugned order has been challenged by the complainant in appeal bearing CA No. 05/16 interalia on the following grounds :-

- that Id. Trial Court has not appreciated that the respondent is leading a luxurious and lavish lifestyle. He is working with M/s. IBM, Gurgaon and is also running a saloon in the name and style of Admire Saloon at Karol Bagh, New Delhi in partnership with his friend, from which, he is earning Rs. 30,000/- per month, which reaches to Rs. 40,000/- to 45,000/- per month during marriage seasons;
- that he has family business of Fine Chemicals at Pahar Ganj from where he is earning Rs. 20,000/- per month and is also having rental income of Rs. 8,000/- per month from an ancestral property situated at Paharganj;

- that he is earning more than Rs.1,50,000/- per month from all sources yet the ld. Trial Court has granted only Rs. 7,500/- per month to the appellant, which is a meagre amount and which is not according to the financial status of the respondent; and
 - that she deserves maintenance of Rs. 75,000/- per month as she is entitled to lead the same lifestyle as that of the respondent.
4. Notice of the appeal was issued to the other side, who has put in appearance and contested the appeals.
 5. Trial Court record of CC No.186/1/14 titled Summi vs. Rahul Abbey was requisitioned, received and perused.
 6. I have heard Shri Ravi Prabha, ld. counsel for the complainant and Shri Vipin Kumar, ld. counsel for the respondent.
 7. Ld. counsel for the complainant submitted that ld. Trial Court in para no. 12 of the impugned order had observed that the respondent had left his job for better prospects and in para no. 14 of the impugned order, reference is made to high profiled Bio Data of respondent dated 25.02.2013 and in para no. 15, it is observed that respondent could not explain as to how he travelled to Macau, China, Thailand and Malaysia within his declared income and in para no. 16, ld. Trial Court has observed that respondent owns one

Toyota Etios car, two LIC policies, PPF account and also six insurance policies and credit cards, further in para no. 17 of the impugned order, it was observed that respondent has shown his expenses at Rs.34,730/- and it is not explained by him as to how he is meeting his expenses within the declared income and yet Id. Trial Court has directed respondent to pay a meagre sum of Rs.7,500/- per month to the complainant.

8. Ld. counsel for the respondent, on the other hand, has submitted that respondent was working as Assistant Manager with IBM (now CONCENTRIX), Gurgaon which job he was forced to leave as he could not attend to work regularly on account of being under depression due to many cases having been filed by the complainant against him and consequently with a threat of termination of his job hanging on his head, he opted to tender his resignation to be able to seek a job lateron, which in the event of termination of his job was not possible. Ld. counsel further submitted that complainant has exaggerated the income and assets of the respondent with a view to seek maintenance from the respondent, to which she is not entitled. Ld. counsel also submitted that respondent has absolutely no rental income. He is not running any Saloon in the name and style of Admire Saloon at Karol Bagh and that he is not having any income from family business of Fine Chemicals at Pahar Ganj as alleged by the complainant. He vehemently denied that respondent has income

of Rs.1,50,000/- per month as alleged. Ld. counsel further submitted that complainant herself is well educated, healthy, able bodied and admittedly working and earning and therefore, in this era of equality of gender, she cannot claim any maintenance from the respondent, who is not having better potential to earn than her.

9. Ld. counsel for the respondent also taken me through the judgment reported as *Sanjay Bhardwaj vs. State & Anr.* 171 (2010) *Delhi Law Times* 644 wherein Hon'ble Delhi High Court has observed as under :-

“4. A perusal of Domestic Violence Act shows that Domestic Violence Act does not create any additional right in favour of wife regarding maintenance. It only enables the Magistrate to pass a maintenance order as per the rights available under existing laws. While, the Act specifies the duties and functions of protection officer, police officer, service providers, magistrate, medical facility providers and duties of Government, the Act is silent about the duties of husband or the duties of wife. Thus, maintenance can be fixed by the Court under Domestic Violence Act only as per prevalent law regarding providing of maintenance by husband to the wife. Under prevalent laws i.e. Hindu Adoption & Maintenance Act, Hindu Marriage Act, Section 125 Cr.P.C. - a husband is supposed to maintain his un-earning spouse out of the income which he earns. No law provides that a husband has to maintain a wife, living separately from him, irrespective of the fact whether he earns or not. Court

cannot tell the husband that he should beg, borrow or steal but give maintenance to the wife, more so when the husband and wife are almost equally qualified and almost equally capable of earning and both of them claimed to be gainfully employed before marriage. If the husband was B.SC and Masters in Marketing Management from Pondicherry University, the wife was MA (English) & MBA. If the husband was working as Manager abroad, the wife with MBA degree was also working in an MNC in India. Under these circumstances, fixing of maintenance by the Court without there being even a prima facie proof of the husband being employed in India and with clear proof of the fact that the passport of the husband was seized, he was not permitted to leave country(the bail was given with a condition that he shall keep visiting Investigating Officer as and when called) is contrary to law and not warranted under provisions of Domestic Violence Act.

We are living in an era of equality of sexes. The Constitution provides equal treatment to be given irrespective of sex, caste and creed. An unemployed husband, who is holding an MBA degree, cannot be treated differently to an unemployed wife, who is also holding an MBA degree. Since both are on equal footing one cannot be asked to maintain other unless one is employed and other is not employed.

10. Both parties had filed their affidavits before the Ld. Trial Court in terms of the judgment reported as *Puneet Kaur vs. Inderjeet Singh Sawhny* 111 (2011) DMC 487.
11. Learned trial Court on appraisal of affidavits of the parties in terms of Judgment *Puneet Kaur vs. Inderjeet Singh Sawhny* 111

(2011) DMC 487 pertaining to their income, expenditure, assets and on appreciation of other material available on record assessed the income of the respondent to be Rs. 35,000/- to 40,000/- per month by observing in the impugned order that:-

"9. In the affidavit dated 04.07.2015 filed by the respondent, he stated that he is having the degree of Bachelor in IT. He further stated that at present he is jobless though he mentioned Rs. 4010/- as his monthly income. During the course of arguments he stated that earlier he was working in Concentrix Daksh Services India Private Ltd. as Assistant Manager-CRM but his services were terminated on 05.06.2015. He relied upon his bank statement.

10. The statement of account of respondent reflects that till 31.03.2015 he was getting approximately Rs. 35,000/- pm as salary. The entries for the relevant period is as under :-

August 2014	Rs. 40,207/-
September 2014	Rs. 34,278/-
October 2014	Rs. 34,769/-
November 2014	Rs. 32,328/-
December 2014	Rs. 33,644/-
January 2015	Rs. 30,420/-
February 2015	Rs. 42,332/-
March 2015	Rs. 33, 911/-

11. Respondent has further stated that his services were terminated on 05.06.2015. But the relieving cum experience certificate filed by respondent makes it clear that it was the respondent who left the said job as it finds mention, "He left on his own accord and we wish him all the best in his future endeavours".

12. It is but obvious that no reasonable person would leave a job unless he has better prospects. Here it is also important to mention that relieving cum experience certificate shows that he had been working therein from

08.02.2005 till 06.05.2015 as Assistant Manager-CRM operations and he left the job only after some months filing of the present petition.

13. On the other hand, complainant has stated that respondent no.1 is working as Assistant Manager in IBM and earning Rs. 1,50,000/- from salary as well as business of selling Patanjali products on internet and also getting rent.

14. The complainant has relied upon one BIO Data of respondent dated 25.02.2013.....

15. The respondent could not explain the same, he just denied the document. The passport of respondent also shows that respondent no.1 has been in Macau, China, Thailand and Malaysia.

17. Further the respondent has stated that he is not working but still earning Rs. 4010/- pm and for rest of his expenses i.e. Rs. 34,730/- pm he is dependent upon his father who is a pensioner and getting Rs.27,000/- pm only. From the above, it is clear that a person earning Rs. 4010/- pm only and depending upon his father cannot afford to have so much expenses. He could not explain as to how he is affording to have so much expenses when he is doing nothing.

21. In view of the above observation, I assess that respondent no.1 must be earning Rs. 35,000/- to Rs. 40,000/- pm".

Qua financial status, qualification and earning potential of the complainant, ld. Trial Court observed that :-

"22. On the other hand, in her income affidavit, the complainant has stated herself to be Post Graduate, having done basic French course and MBA. She has stated herself to be unemployed.

23. However, the bank statement of complainant of account in Kotak Mahindra from the period 31.03.2012 to 30.11.2014 reflects that she had been working earlier and

getting salary of Rs. 18,605/- to Rs. 21,394/- till 21.04.2013.

24. During the course of arguments, she admitted that she had been working before marriage but at present she is jobless. The fact could not be rebutted by the respondent however, it was submitted by him that complainant is capable of working and hence, she is not entitled for any maintenance.

26. From the affidavit it is clear that complainant is a qualified woman who is capable of earning and earlier she was getting salary of Rs. 21,000/- but the assessed income of the respondent is higher than of the complainant. This is not in dispute that at present complainant is not working. But it is also an admitted fact that complainant is a well qualified woman and in number of cases it has been held that a person who is capable of working and can earn must must and earn instead of sitting idle. Admittedly the complainant is having no liability of any child as no child was born out of the marriage."

12. Appellant as well as respondent have submitted that they are not in a position to work and earn because of the litigation, they are fighting against each other.

13. It is relevant to note here that the parties do not have any issue. Therefore, neither side has any liability to maintain any other person except himself/herself.

14. There is no document on record, which may indicate that respondent has rental income of Rs. 8,000/- per month. There is further no document on record to indicate that he is running a saloon in the name and style of Admire Saloon at Karol Bagh

yielding income of Rs. 30,000/- per month. There is further no document to prove that he is running a business of Fine Chemicals at Pahar Ganj. There is further no document to prove that he has any income from sale of Patanjali products.

15. It is not in dispute that appellant herself is a Post Graduate having done basic French Course and MBA. She has a potential to work and earn as she has been doing earlier. She does not have any liability of upbringing or maintaining any child.
16. Both the complainant and respondent are qualified. Both have tried to prove that they are feeling depressed on account of litigation they are fighting against each other and hence they are not able to focus on their jobs.
17. Both the complainant and the respondent were employed. Both were earning but now both submit that they are not employed. Both the complainant and respondent are well qualified. Both are capable of earning and both were gainfully employed before marriage.
18. Ld. Trial Court has granted maintenance to the complainant observing that at present the complainant is jobless and some time is required for searching a job, hence in order to avoid any hardship to her, respondent was directed to pay Rs.7,500/- per

month to the complainant. The complainant has not specified as to what efforts she has made or is making to search for a job. She cannot continue to sit idle and expect the respondent to maintain her. At this stage, I do not feel inclined to interfere with the impugned order. Respondent may file an appropriate application before the Ld. Trial Court after reasonable lapse of time within which the complainant should make efforts to search for a job.

19. In view of aforesaid, both the appeals bearing CA Nos.04/16 and 05/16 are dismissed. Copy of this judgment be placed in both the appeal files.

Parties are directed to appear before the Ld. Trial Court on 25.02.2016 at 2.00 PM.

Trial Court record along-with copy of Judgment be sent back.

File of both the appeals be consigned to Record Room.

Announced in open Court on
dated 18th day of February, 2016.

(Rekha Rani)
District & Sessions Judge (West)
Tis Hazari Courts/Delhi