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

CNR No. DLHC010461412026

+ **CRL.REV.P.(MAT.) 583/2026 & CRL.M.A. 30101-30102/2026**

ASHWANI KUMAR

.....Petitioner

Through: *Appearance not given.*

versus

NAMITA

.....Respondent

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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25.09.2026

1. This petition challenges the order dated 06th June, 2026 passed by the Family Court-02, North-East District, Karkardooma Courts, Delhi in MT No. 185/2025. By that order, the Family Court assessed the interim maintenance payable to the Respondent-Wife at INR 20,000/- per month. After adjusting INR 7,000/- per month already awarded in proceedings under the Protection of Women from Domestic Violence Act, 2005 ["PWDV Act"], the Petitioner has been directed to pay INR 13,000/- per month from the date of filing of the maintenance petition. The challenge before this Court is confined to that interim arrangement.

2. Counsel for the Petitioner-Husband assails the order principally on the ground that the Respondent, though presently unemployed, has the capacity to earn. She is a B.Sc. Nursing graduate, had worked earlier, appeared in recruitment examinations including NORCET and, according to the



Petitioner, was selected as a Nursing Officer. It is also alleged that she earns about INR 40,000/- per month from tuition. It is submitted that the Family Court treated her present unemployment as sufficient without adequately examining her professional qualification, previous employment or whether she had made any genuine effort to become financially independent. Reliance is placed upon the decision of the Supreme Court in ***Bhushan Kumar Meen v. Mansi Meen @ Harpreet Kaur***¹ and of the High Court of Madhya Pradesh in ***Mamta Jaiswal v. Rajesh Jaiswal***².

3. The Petitioner also contests the Respondent's entitlement to interim maintenance on the ground that she left the matrimonial home voluntarily and thereafter declined to return despite his efforts at reconciliation. He relies upon the handwritten letter left by her, the messages subsequently sent by him to her father requesting her return, and his institution of proceedings under Section 9 of the Hindu Marriage Act, 1955 ["HMA"] for restitution of conjugal rights. He further relies upon an audio recording which, according to him, contains an admission by the Respondent that she left the matrimonial home of her own volition. It is submitted that these circumstances were relevant to the application of Section 144(4) BNSS but were not adequately considered by the Family Court.

4. The other challenge is to the assessment of the Petitioner's financial capacity. Counsel submits that the Petitioner's salary cannot be looked at in isolation. Reliance is *inter alia* placed upon the home-loan instalments and other EMIs, the rent of INR 15,000/- per month stated to have been incurred for separate accommodation, the payment of INR 12,000/- per month

¹ Criminal Appeal No. 879/2009, decided on 28th April, 2009 [incorrectly cited in the petition as SLP (Crl.) No. 7924/2008].



towards his mother and sister's expenses, the maintenance payable under the PWDV Act proceedings. According to the Petitioner, once these commitments are properly accounted for, the amount left at his disposal does not justify the maintenance fixed by the Family Court.

5. The Respondent's case, as reflected from the record, is that she has no present independent source of income and is still preparing for a government examination/job. The Family Court noticed the competing positions: the Petitioner asserted that she had been selected as a Nursing Officer and was earning from tuition, whereas the Respondent maintained that she had no present employment. Significantly, even the Petitioner's case before the Family Court was that although she was stated to have been selected in August 2024, he was not aware whether she had joined the post.

6. These submissions have to be examined within the limited scope of revisional jurisdiction against an order of interim maintenance. Such an order concerns only an interim assessment based on the material available before the Family Court at that stage. The revisional Court does not ordinarily reappreciate the evidence or reassess factual findings, unless the impugned order suffers from a jurisdictional error or material irregularity. In *Amit Kapoor v. Ramesh Chander & Ors.*³, the Supreme Court held that the object of revisional jurisdiction is to correct a patent defect or an error of jurisdiction or law, and that interference may be warranted where the finding is based on no evidence, material evidence is ignored, or judicial discretion is exercised arbitrarily or perversely. Applying these principles to an order of interim maintenance, this Court in *Shri Manav Tandon v. Sidhi Luthra*

² 2000 SCC OnLine MP 580.

³ (2012) 9 SCC 640.



& *Anr.*⁴ declined to interfere where the assessment made by the Family Court did not suffer from any jurisdictional error or material irregularity.

7. Tested on that standard, the first objection does not persuade this Court. The Respondent's qualification was not overlooked by the Family Court. It expressly noticed that she is a B.Sc. Nursing graduate, had previously worked, and that the Petitioner claimed that she had been selected as a Nursing Officer and was earning INR 40,000/- per month from tuition. Her qualification is, in fact, disclosed in her own financial affidavit. The allegation of concealment, insofar as it concerns her qualification, therefore does not arise.

8. There is, however, a distinction between a spouse's qualification, capacity to earn and actual earnings. Qualification, previous employment and present employability may be relevant considerations, but capacity to earn cannot be equated with actual earnings. In *Shailja & Anr. v. Khobbanna*⁵, the Supreme Court distinguished between the capacity to earn and actual earning, observing that whether a spouse is capable of earning or is actually earning are two different requirements. More recently, in *Dhirendra Kumar v. Swati Saista*⁶, this Court held that the Court may take into account the age, qualifications, previous employment and present employability of the spouse claiming maintenance. A qualified spouse may be required to make *bona fide* efforts towards securing employment; however, capacity to earn cannot be equated with actual earnings.

9. That balance is apposite here. The Respondent's professional qualification and previous employment are relevant considerations and

⁴ CRL.REV.P.(MAT.) 425/2026, decided on 01st September, 2026 (Delhi High Court).

⁵ (2018) 12 SCC 199.



would remain so while determining her final entitlement. However, the present record does not establish that she joined the alleged post, presently draws a salary, or earns INR 40,000/- per month from tuition. The mere fact that she is professionally qualified and capable of earning cannot, by itself, justify attributing a notional income to her. In *Rajnesh v. Neha & Anr.*⁷, the Supreme Court held that, while determining the quantum of maintenance, the Court must consider, *inter alia*, whether the claimant is educated and professionally qualified, whether she has any independent source of income, and whether she was employed prior to or during the subsistence of the marriage. The Court must also take into consideration the financial capacity and actual income of the spouse liable to pay maintenance, his reasonable expenses, dependent family members and liabilities. The determination must, thus, be based on the relevant facts and circumstances and cannot proceed on the basis of earning capacity alone.

10. The decisions relied upon by the Petitioner do not carry the matter far. In *Bhushan Kumar Meen*, the Supreme Court modified the interim maintenance from INR 10,000/- to INR 5,000/- per month, having regard to the financial circumstances before it. The appellant-husband was drawing approximately INR 34,900/- per month, from which various deductions, including INR 21,329/- towards repayment of a home loan, were being made, leaving him with about INR 9,000/- as take-home salary. The Court also noted that, at that stage, the Respondent-wife was not employed and there was nothing on record to indicate that she was engaged in any gainful work, though she possessed qualifications which could enable her to

⁶ CRL.REV.P. 363/2021 & 43/2022, decided on 30th July, 2026 (Delhi High Court).

⁷ (2021) 2 SCC 324.



maintain herself in the future. Pertinently, the Supreme Court made it clear that it had not gone into the question of the amount finally payable as maintenance and that the arrangement was only interim in nature. The question regarding the applicability of Section 125 CrPC was also left open. The decision, therefore, does not support the proposition that professional qualification, by itself, disentitles a spouse to interim maintenance.

11. *Mamta Jaiswal* arose under Section 24 HMA and concerned a spouse who was highly qualified and had previously been employed. The Court emphasised that a spouse who is well qualified and capable of securing employment is expected to make sincere efforts towards supporting herself or himself and cannot simply remain idle and place the burden of maintenance on the other spouse. The observations in that decision cannot, however, be understood as laying down an inflexible rule that every educated or professionally qualified spouse must be attributed a notional income in the absence of proof of actual earnings. That would be inconsistent with the distinction subsequently drawn by the Supreme Court in *Shailja* and reiterated by this Court in *Dhirendra Kumar*.

12. The Petitioner's contention regarding the Respondent's separate residence also cannot be finally determined at this stage. Section 144(4) BNSS disentitles a wife who, without any sufficient reason, refuses to live with her husband. The material words for present purposes are "without any sufficient reason". Whether that condition is satisfied here is itself disputed. The Respondent attributes the separation to circumstances arising in the matrimonial home, whereas the Petitioner maintains that she left voluntarily.

13. The material relied upon by the Petitioner certainly deserves consideration, but it does not conclude the issue at this stage. The



handwritten note does not indicate an intention to permanently abandon the matrimonial relationship; rather, it speaks of her departure as temporary and expresses an intention to return. The messages relied upon by the Petitioner indicate that he thereafter sought her return. His institution of proceedings under Section 9 HMA also reflects his stated willingness to resume cohabitation. Likewise, the audio recording relied upon by him may be relevant, subject to its proof and the context in which it is considered. None of these circumstances, by itself, determines whether the Respondent's continued separate residence was without sufficient reason. That issue will have to be decided on evidence. The interim maintenance stage is not the occasion for recording a final finding on the matrimonial dispute.

14. The rent agreement relied upon by the Petitioner also does not establish a subsisting rental liability as on the date of the impugned order. The agreement records rent of INR 15,000/- per month and a tenancy commencing from 01st June, 2024, but the tenure specified in the document is eleven months. The impugned order was passed on 06th June, 2026. There is no material on record evidencing renewal of the tenancy or continued payment of rent thereafter.

15. Coming then to the quantum, the Family Court did not proceed merely on the Petitioner's salary. The income disclosed by him in his affidavit of income, assets and liabilities was INR 93,420/- per month. The Court noticed his general expenditure, the EMIs disclosed by him, the INR 7,000/- already payable under the PWDV Act proceedings and the INR 12,000/- per month payable towards the expenses of his mother and sister. It ultimately assessed his overall monthly outgo, including expenditure upon dependent family members, at approximately INR 70,000/- and thereafter



fixed the Respondent's interim maintenance at INR 20,000/- per month, after adjusting the INR 7,000/- already awarded in the other proceedings.

16. One factual clarification is necessary in relation to the amount of INR 12,000/-. The order dated 29th July, 2024 does not record any adjudicated award of maintenance to the Petitioner's mother. It records that the Petitioner agreed to pay INR 12,000/- per month into his mother's bank account towards the expenses of his mother and sister, following which his mother stated that she did not wish to pursue the proceedings and the interim application was disposed of as compromised. The commitment nevertheless constitutes a disclosed recurring financial obligation, and the Family Court did take it into account while assessing the Petitioner's financial position.

17. The EMIs disclosed by the Petitioner also require consideration, but their mere existence does not warrant treating them as essential expenditure or mechanically deducting them from his income. In **Deepa Joshi v. Gaurav Joshi**⁸, the Supreme Court held that deductions arising from financial commitments such as loan repayments, particularly where they contribute towards creation or acquisition of assets, cannot be placed on the same footing as necessary expenditure so as to substantially reduce the liability of maintenance. The Court further observed that such repayments may partake the character of capital investment and cannot be equated with essential or unavoidable expenditure. At the same time, the determination of maintenance must remain fair and reasonable and should not impose an excessive burden on the person liable to pay.

18. Viewed as a whole, the quantum fixed by the Family Court does not disclose such disproportion to the financial material before it as would



warrant interference in revisional jurisdiction. The Petitioner's disclosed income was INR 93,420/- per month; his liabilities and the INR 12,000/- per month payable towards the expenses of his mother and sister were noticed; the maintenance already awarded under the PWDV Act was duly adjusted; and no present independent income of the Respondent has been established. The Family Court, thus, fixed the interim maintenance at INR 20,000/- per month, of which the additional liability under the impugned order is INR 13,000/- per month. The assessment may be approximate, as assessments at this stage often are, but it cannot be termed arbitrary or perverse.

19. In view of the foregoing, the Court finds no jurisdictional error, material irregularity or perversity in the impugned order warranting interference in revision. The present petition, along with the pending applications, is accordingly dismissed.

20. The Petitioner shall, however, be at liberty to seek appropriate relief in accordance with law if there is any subsequent material change in the Respondent's employment or income, or in the financial circumstances of either party.

21. It is clarified that the observations made above are confined to the examination of the order of interim maintenance and shall not be treated as findings on the merits of the proceedings pending before the Family Court.

SANJEEV NARULA, J

SEPTEMBER 25, 2026/hc

⁸ 2026 SCC OnLine SC 597.