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

Delivered on: 29th September, 2015

+ CRL.M.C. 3288/2014, CrI.M.A.No.11360/2014 & 9332/2015

ANUJ SHARMA

..... Petitioner

Represented by: Mr.Kanwal Chaudhary,
Adv with petitioner in
person.

Versus

CHANCHAL VERMA AND ANR

..... Respondents

Represented by: Mr.Dhananjai Jain &
Ms.Savita Singh, Advs for
R1 with respondent No.1
in person.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the present petition, petitioner seeks direction thereby modifying the order dated 07.07.2014 passed by learned Additional Sessions Judge/07, Central, Tis Hazari, Delhi in Appeal No.60/14 filed under section 29 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the 'said Act') emanating from Complaint No.15/6/14 titled as 'Chanchal Verma vs. Anuj Sharma & Ors.' filed under section 12 of the said Act pending before the Court of Metropolitan Magistrate, Mahila Court, Tis Hazari, Delhi.

2. Upon complaint filed by respondent no.1, learned MM vide its order dated 15.04.2014 directed the petitioner to pay a sum of Rs.15,000/- per month as interim maintenance w.e.f. 22.01.2014 and further a sum of Rs.10,000/- per month as monthly rent. Apart therefrom another sum of Rs.50,000/- was awarded as one time litigation expenses. Being aggrieved, the petitioner challenged the same in the appeal mentioned above. Same was partly allowed by order dated 07.07.2014 whereby learned Revisional Court reduced the quantum of interim monthly maintenance from Rs.15,000/- to Rs.12,000/- pm; and further reduced the monthly rental from Rs.10,000/- to Rs.8,000/- per month.

3. Mr. Kanwal Chaudhary, learned counsel appearing on behalf of the petitioner submitted that learned ASJ grossly erred in taking the monthly salary of the petitioner to be Rs.35,000/- instead of Rs.29,000/- per month or say Rs.3,47,514/- annual gross total income. The fact of the income of the petitioner is established from form 16 for the Assessment Year 2014-15 and the year 2011 to 2014. However, both the courts below have failed to appreciate the evidence available on record and yet ordered the maintenance of Rs.12,000/- per month, apart from Rs.8,000/- per month towards rental without there being any evidence that respondent no.1 was residing in a rental accommodation.

4. Learned counsel further submitted that the petitioner is the only earning member in the family. His father is pre-deceased. He is staying in House No. 197, Gautam Nagar, New Delhi near Rani ki Kothi, Hauz Khas, New Delhi. The said house is in the name of his

mother and she is getting rental income of Rs.22,500/- from three tenants.

5. Learned counsel for the petitioner has drawn the attention of this Court to page 86 of the paper book, which is form 16, whereby it is established that annual income of the petitioner is Rs.3,47,514/- for the Assessment Year 2014-15; and Rs.2,58,215/- for the Assessment Year 2013-14; and Rs.2,41,260/- for the Assessment Year 2012-13. Thus, under any stretch of imagination the petitioner is unable to pay an amount of Rs.20,000/- per month in favour of the respondent no.1. Thus, the impugned order deserves to be modified keeping in view the income of the petitioner.

6. On the other hand, Mr. Dhananjai Jain, learned counsel for respondent submitted that learned Trial Court and the Revisional Court have given their opinion based on the material on record. The courts below have considered the salary received in his account; premium paid for Insurance Policies; rental income received and that he has no other liability. Moreover, it is also considered that the petitioner is living in South Delhi having eight rooms accommodation. The respondent No.1 is entitled to live in same standard wherein the petitioner is living. In said locality, rent of one room is around Rs.10,000/- to Rs.12,000/- per month. Thus, there is no illegality or perversity in the orders passed by the courts below.

7. I have heard learned counsel for the parties and perused the material on record. As regards the income of the petitioner he has filed his affidavit along with form 16 whereby for the financial year 2012-13

the petitioner has earned Rs. 2,99,789/-; and for the previous year the income was shown as Rs. 2,80,069/-. The relevant period in question was the Assessment Year 2013-14. As per the income of the said year, the gross salary is Rs.2,99,789/-, which is at page 95 of the paper book, with deductible amount Rs.11,845/- towards Employee Provident Fund and an amount of Rs.1,02,000/- as Fixed Deposits for 5 years. The petitioner had also filed on record copy of his bank account whereby salary is shown to be credited as follows, i.e., for August Rs. 25,319/-, September Rs. 39,340/-, October Rs. 36,031/-, November Rs. 35,799/-, December Rs. 37,220/-, January Rs. 31,070/- and February Rs. 37,474/-. If the average of the aforesaid salary of the petitioner is taken, the income of the petitioner comes to Rs.25,000/-; and if it is divided by 3, the petitioner would be liable for an amount of Rs. 11,666/- (rounded to Rs. 12,000/-p.m.).

8. As regards the issue of alternate accommodation, the matrimonial house consisted of about 08 rooms, out of which 03 had been rented out to tenants and receiving rent of Rs. 23,000/- per month in total. Since respondent/complainant is entitled to either live in the matrimonial home or allowance equivalent to live at the same level, the learned revisional court directed that the respondent/ complainant is entitled to allowance of Rs. 8,000/- equivalent to market rent of one room in the area.

9. On going through form 16 for the Assessment Year 2014-15 of the petitioner at page 89, which has been relied upon by the petitioner, the gross salary of the petitioner is Rs.3,95,207/-, Rs. 30,155/- is

deductible amount towards Life Insurance Premium, Rs.70,000/- towards Public Provident Fund and Rs.12,408/- towards Employee Provident Fund. Thus, the income of the petitioner comes to Rs.3,47,514/-. If I compare the salary of the petitioner for the Assessment Year 2013-14, the gross income is Rs.2,99,789/- with deductible amount Rs.11,845/- towards Employee Provident Fund and an amount of Rs.1,02,000/- towards Fixed Deposits for 5 years. His net income comes to Rs.2,58,215/-.

10. The learned Revisional Court has considered the salary of the petitioner in para 6 of its order on the basis of his salary slips. The salary slips can be more authentic than what is shown in the form 16 issued by the establishment where petitioner is working. It is pertinent to mention here that the affidavit filed by the petitioner in terms of order dated 22.02.2014 passed by learned MM, Mahila Court, the litigation expenses shown by the petitioner is Rs. 1 lakh till 22.02.2014. In addition to the above, the petitioner is admittedly maintaining two insurance policies being policy no. 489054155 for which he is paying premium of Rs.20,000/- and another policy being policy no. 354216749 for which he is paying premium of Rs.10,103/-. Apart from that, the petitioner is also having rental income. Thus, the petitioner has sufficient means to pay maintenance to respondent No.1 who is legally entitled for the same.

11. In view of the, I find no illegality or perversity in the impugned order passed by learned Revisional Court.

12. Consequently, instant petition is hereby dismissed being devoid of any merit.

Crl.M.A.No.11360/2014 & 9332/2015

Dismissed as infructuous.

**SURESH KAIT
(JUDGE)**

SEPTEMBER 29, 2015

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