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

\+ CRL.M.C. 4116/2016

JAINENDER KANWAR ..... Petitioner

Represented by: Mr. Hemant Kumar and Ms. Abhilasha Singh, Advocates.

versus

ALKA KANWAR & ORS ..... Respondents

Represented by: None.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

<u>O R D E R</u>

% **04.11.2016**

<u>Crl. M.A. No. 17171/2016 (Exemption)</u>

Allowed, subject to all just exceptions.

<u>CRL.M.C. 4116/2016 and Crl. M.A. No. 17170/2016 (stay)</u>

1. The petitioner and respondent No.1, who were married in October, 1998 parted company in January, 2005. From the wedlock two children, that is, respondent Nos. 2 and 3 were born on 1st July, 1999 and 17th November, 2001 respectively. The respondent No.1 filed a complaint before CAW Cell which was withdrawn later as the parties entered into a compromise and the petitioner agreed to pay a maintenance for a sum of ₹2,000/- per month to the respondent No.1.

2. In May, 2013 the respondent No.1 filed a complaint under Section 12 of the Prevention of Women from Domestic Violence Act, 2005 (in short 'the Act') seeking maintenance from the petitioner for herself and the minor

children i.e. respondent Nos. 2 and 3. Along with the complaint, income affidavit was filed which was also sought from the petitioner by the learned Trial Court. After hearing the parties, the learned Trial Court vide order dated 9th February, 2015 awarded monthly maintenance of ₹36,000/- to the respondent Nos. 2 and 3 since the inception of the proceedings, that is, May, 2013 and thereafter a sum of ₹36,000/- to be paid per month for the maintenance of respondent Nos. 2 and 3. The petitioner challenged the order dated 9th February, 2015 passed by the learned Metropolitan Magistrate in an appeal under Section 29 of the Act wherein vide the impugned order dated 28th May, 2016 the quantum of maintenance was reduced to ₹24,000/- per month out of which ₹14,000/- was to be paid as maintenance for respondent No. 2 and ₹10,000/- as maintenance for respondent No.3 per month till they attain majority.

3. Aggrieved by the impugned order dated 28th May, 2016 passed by the learned Additional Sessions Judge the petitioner prefers the present petition.

4. Learned counsel for the petitioner urges that both the Courts below failed to appreciate that the petitioner was getting a salary of ₹56,969/- per month on which he had to pay the EMI of ₹12,516/- per month and tax of ₹9,500/-. Thus the take home salary of the petitioner was ₹34,953/- and from the same it was not possible for the petitioner to survive after paying a sum of ₹24,000/- as monthly maintenance for respondent Nos. 2 and 3. Further though the respondent No.1 states that she earned ₹43,000/- per month however, according to her, her monthly expenditure was ₹1,72,400/-. From the salary of ₹43,000/- she could not have spent ₹1,72,400/- per month and thus the expenditure was exaggerated. Further no documents supporting

the expenditure were filed.

5. Admittedly, the parties separated in January, 2005 and after settlement was arrived at before CAW Cell, the petitioner was paying maintenance for a sum of ₹2,000/- per month only to the respondent No.1. In May, 2013 the respondent No.1 filed a complaint whereafter for the first time an order of interim maintenance has been passed against the petitioner and in favour of respondent Nos. 2 and 3. Thus all these years the expenditure of the minor children were being born by the respondent No.1. The children as on date are approximately 17 years and 15 years of age and over the years the expenses on education and other expenses must have increased. Even if due to the respondent No.1 being a teacher in school, the fee of respondent Nos. 2 and 3 is exempted but it cannot be denied that other expenses apart from tuition fee for a better education and expenses on food, medicine, entertainment, holiday, conveyance, internet etc. are also required to be met. Further the respondent No.1 showed that the elder son, who is aged 17 years had joined two years Classroom Programme (JEE) at the FIITJEE for which she paid a fee of ₹2,33,187/- by way of demand draft and post dated cheques. The respondent No.1 has also filed her income tax return, bank account statement, salary slip, electricity bill, telephone bill, property tax receipt, PNG consumption bill, water bill, fee acknowledgement etc. From the income tax certificate of respondent No.1 and the expenses born by her, it cannot be held that she had sufficient means to bear the expenses of maintenance both for herself and the two minor children. Further in the impugned order the learned Appellate Court also noted that from the copy of the income tax return of the petitioner for the

Assessment Year 2013-2014 his gross total income was reflected as ₹8,72,201/- on which tax of ₹86,561/- was payable. Thus after the deduction of the income tax, the net income of the petitioner for the Assessment Year 2013-14 was ₹7,84,641/-. Thus this Court finds no error in the impugned order passed by the learned Additional Sessions Judge whereby the maintenance granted in favour of respondent Nos. 2 and 3 was reduced and modified to a total sum of ₹24,000/- per month.

6. Petition and application are dismissed

MUKTA GUPTA, J.

NOVEMBER 04, 2016
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