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

+ CRL.REV.P. 831/2015

PRADEEP KUMAR SHARMA Petitioner

Through: Mr.Atul Sharma, Adv.

versus

SAVITRI DEVI Respondent

Through: Mr.Imran Khan, Adv.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

% **12.08.2016**

Crl.M.A.No.18601-18602/2016

1. The present applications have been seeking condonation of delay of 65 days and 26 days in filing and refiling the instant petition.
2. For the reasons stated in the application, the same are allowed.
3. The applications stand disposed of.

Crl.Revision Petition No. 831/2016

1. The present revision petition has been filed by the petitioner under Section 397 Cr.P.C. for setting aside the impugned order of maintenance dated 04.06.2015 passed by the Principal Judge, Family Courts, Vishwas Nagar, North East District, Delhi whereby the

petitioner/son has been directed to pay a sum of Rs.4,000/- per month to the respondent/mother towards maintenance with effect from 06.07.2012.

2. The facts of the case in a nutshell are that the respondent/mother filed a petition before the Trial Court for grant of maintenance where petitioner/son was arrayed as respondent No.1 apart from two other sons of the respondent. The respondent submitted that she has two daughters who are married and settled. After death of her husband, she is living in a joint family with her sons. Two of her sons are government employees while another son, the petitioner herein, is into travel business. According to her, the immovable property was taken over by her sons. Sh.Komal Sharma, one of the sons, arrayed as respondent No.3 below, was taking care of her while the other two had occupied her property. The title papers had been taken away by her first son and none of her sons were maintaining her though they were sufficiently well off, having decent social position and living with decent standards. She prayed for maintenance of Rs.15,000/- to be paid equally by her three sons.

3. On notice being served, the petitioner/son entered appearance

and stated that he has retired, has no income and is dependent on the pension of Rs.1,500/- per month. He denied the allegation of him running a travel business in the name and style of Sharma Tours and Travels. The petition qua Sh.Komal Sharma was withdrawn as noted in the order sheet dated 19.03.2014 since he was maintaining the mother.

4. When the matter was assigned to the Family Courts, the other son of the respondent/Mr.Sunil Kumar made a statement on oath on 28.01.2015 that he shall pay a sum of Rs.5,000/- per month to his mother/petitioner herein.

5. Thus, the petitioner was left as the only contesting party before the Family Court.

6. To make out a case, the respondent/Smt.Savitri Devi entered in the witness box and examined herself as PW1 and reiterated the contents of the petition.

7. The petitioner/Mr.Pradeep Kumar Sharma examined himself as RW-1 and filed his affidavit. He testified that he is not earning and denied running a business and further testified that he is dependent on the government pension which he is getting at the rate of Rs.1,500 per

month. In his cross examination, it was elicited that he worked in a travel agency till 2006 after retirement from M/s Siyaram in 1995. He denied getting rent from one portion but admitted that he is getting rents. The question for determination before the Trial Court was whether the petitioner neglected and refused to maintain his aged mother. The court observed that the petitioner was running a shop earlier; owns a property bearing no.D-731, paying premium of Rs.2,700/- towards LIC; has medical expenses of Rs.1,000/- per month; capable of paying Rs.500/- to his counsel on each date of hearing; and his wife is employed with Tata Company. Though, he claimed that he was being maintained by his son, it becomes very difficult to sail with the petitioner that he does not have any source of income and in the given circumstances his income was taken on par with minimum wages applicable to an unskilled workman. Thus, the same came to Rs.8,632/- which was rounded up to Rs.9,000/- per month. Considering his own expenses and his wife being an entrepreneur of a boutique and his son being employed, his expenses were taken at Rs.5,000/- per month. Therefore, a sum of Rs.4,000/- was determined as an ideal sum to be awarded as maintenance

payable by the petitioner to the respondent, his mother.

8. The learned counsel for the petitioner in support of his case has taken the grounds that the Trial Court has failed to appreciate the fact that the age of the petitioner is 59 years, retired from M/s Siyaram, left the work from Trabel Agencies in 2006, has no source of income except a pension of Rs.1,500/-; that the petitioner has been recently operated in both his eyes and thus he is not able to do any job due to weakness and other old age illnesses; that the other two brothers of the petitioner are in Government service and thus are of capable of maintaining the respondent; that the petitioner is totally dependent upon his son; that his other two brothers being in Government service are providing free medical facility to their mother and as such no other expenses are being borne by them.

9. I have heard the learned counsel for the petitioner and gone through the record.

10. The adult children have both, legal and moral, duty to support their aged parents and if they fail to perform the said duty, they can be obligated to do so. In the instant case, the petitioner himself has filed an affidavit showing his income as Rs.2,000/- per month from the

shop, shown expenses of Rs.2,700/- being paid twice in a year against premium of LIC mediclaim and medical hospitalization expenses of Rs.1,000/- per month as well as legal litigation expenses of Rs.500/- per date and other expenses of Rs.2,000/- per year on family functions and Rs.3,000/- per year on festival and thus even if he is income is taken on par with minimum wages of an unskilled workman, the same would work out to nearly Rs.9,000/- per month and thus the Trial Court has rightly fixed the maintenance payable by the petitioner to his mother/respondent at Rs.4,000 per month and this Court finds no illegality or infirmity with the impugned order dated 04.06.2015.

11. Dismissed.

P.S.TEJI, J

AUGUST 12, 2016/dm