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

\+ CRL.REV.P. 484/2014 & Crl.M.A.12830/2014 (Directions) & Crl.M.A.759/2015 (Directions)

SMT ANSHU GUPTA & ANR ..... Petitioners
Through: Ms.Madhu Tewatia and Mr.Adhirath Singh, Advs.

versus

AJAY GUPTA ..... Respondent
Through: Mr.Randhir Jain, Adv.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

<u>O R D E R</u>
% 19.07.2017

The petitioner has challenged the order dated 20.11.2013 passed by the learned Family Court, Saket, New Delhi in Maintenance Petition No.546/2011 whereby the respondent has been directed to pay to the petitioner, maintenance at the rate of Rs.3500/- per month from the date of filing of the petition under Section 125 of the Code of Criminal Procedure till 31.12.2012 and the maintenance at the rate of Rs.6000/- per month w.e.f. 01.01.2013.

Learned counsel for the petitioner has pointed out that initially an amount of Rs.3500/-, as an interim measure, was ordered to be paid to the petitioner by order dated 13.02.2007, which amount was enhanced to Rs.6000/- per month by order dated 16.08.2010 w.e.f. 04.07.2009 (the date of filing of the petition under Section 127 Cr.P.C) till disposal of the petition under Section 125 of the Cr.P.C. These facts have not been adverted to while passing the final order.

Learned counsel for the petitioner has also pointed out that the Court below, despite being convinced of the fact that the respondent had concealed his income, did not ask him to furnish affidavit regarding his income, liabilities and assets.

It is further argued that the assessment of the monthly income of the respondent is based on no objective analysis and some kind of a ballpark figure for the monthly income of the respondent has been arrived at by the Court below.

The respondent is stated to be an Income Tax payee but in his income tax return he has shown his income as Rs.8800/- per month. The above submission of the respondent was not accepted by the Family Court, nonetheless there was nothing before the Trial Court to have come to the conclusion that the income of the respondent was Rs.15,000/- per month. The assessment of the Trial Court, it has been argued, is seriously flawed. The fact remains, it has been urged, that the respondent is a Chartered Accountant by profession.

The aforesaid contentions of the petitioner are disputed by the learned counsel appearing for the respondent.

From the order impugned it appears that the assessment of the monthly income of the respondent is only an estimate but without any basis. The Court below ought to have asked for the affidavit of the income, expenditure and liabilities and assets of the respondent.

The other aspect which reflects non application of mind of the Court below is that the enhanced maintenance amount ordered under Section 127 of the Code of Criminal Procedure had not at all been adverted to. The fixation of time till (13.12.2012) the maintenance had to be paid at the rate of Rs.3500/- per month also appears to be arbitrary. No petition was filed or no order was passed on the aforesaid date.

The order, therefore, is not sustainable and is accordingly set aside.

The case is remitted to the Family Court, Saket, to write out an order in accordance with law after giving a fresh hearing to the parties.

In the meantime, the respondent shall continue to pay Rs.6000/- per month to the petitioner.

This writ petition is allowed to the extent indicated above.

The case be listed before the learned Family Court, Saket on 24.07.2017.

ASHUTOSH KUMAR, J

JULY 19, 2017

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