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

+ CM(M) 1164/2017 & CM 37861/2017

ROHIT KUMAR Petitioner

Through: Mr. M.K. Verma, Advocate

versus

BHAVNA Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

% **24.10.2017**

1. The petitioner has challenged the order dated 8th June, 2017 whereby the learned Family court has awarded maintenance of Rs.4,000/- per month to the respondent from the date of the application.

2. Learned counsel for the petitioner submits that the petitioner is unemployed and has no source of income. It is further submitted that the petitioner is unable to pay any maintenance to the respondent as the petitioner is dependent on his retired father.

3. The learned Family Court observed that the petitioner's contention that he is unemployed, does not appear to be convincing considering that the petitioner is not incapacitated in any manner or incapable to earn his livelihood. The learned Family Court has assumed the income of the petitioner equivalent to the minimum wages of Rs.13,350/- in respect of an unskilled worker to fix the maintenance. The relevant portion of the impugned judgment is reproduced hereunder:

“There is no documentary evidence on record which may reflect true income of the petitioner/husband, at this stage. The contention raised by the petitioner/husband that he is unemployed, does not appear to

be convincing. There is also no evidence to the effect that petitioner/husband is incapacitated in any manner or unable to earn his livelihood. The minimum wages as notified by government of NCT of Delhi w.e.f. March, 2017 are in the bracket of Rs.13,350/- per month for an unskilled worker and at Rs.16,182/- per month for a skilled worker. Considering the facts and circumstances and background status of the parties, it can be reasonably assumed that petitioner/husband is capable of earning to the extent of minimum wages in the bracket of Rs.13,350/- to Rs.16,182/- per month. Merely because the husband may not make adequate efforts for even earning minimum wages, it cannot be held that he is incapable of earning anything. The petitioner also does not appear to have any other liability.

Further, there is nothing on record to reflect that applicant/respondent wife is employed or having any source of income and is admittedly staying with her parents and is dependent on them.”

4. During the course of the hearing, it was put to learned counsel for the petitioner that as to how the petitioner would have maintained the respondent if the respondent had been staying with the petitioner. Learned counsel for the petitioner submits that in that event the petitioner would have “anyhow” maintained the respondent. This Court is not satisfied with this explanation.

5. There is no merit in this petition which is hereby dismissed. The pending application is also dismissed.

J.R. MIDHA, J.

OCTOBER 24, 2017

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