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

CRL.REV.P. 924/2019

Date of Decision: 06.12.2019

IN THE MATTER OF:

GOPAL CHAWLA

..... Petitioner

Through: Mr. Saurabh Banerjee and Mr. Bikram Singh, Advocates.

Versus

YOGITA SAXENA @ POOJA CHAWLA & ANR..... Respondents

Through: Mr.(appearance not given), Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J. (ORAL)

1. The present revision petition has been filed by the petitioner assailing the impugned order dated 30.05.2019 passed by Judge, Family Court, Shahdara District, Delhi wherein the Court granted maintenance of Rs.8000/- to the respondents (Rs.5000/- to Respondent no.1 and Rs.3000/- to Respondent no.2)

2. The marriage between the petitioner and Respondent No.1 was solemnized in accordance with Hindu rites and ceremonies on 09.07.2011. A daughter namely Dipanshi (Respondent No. 2) was born out of the said wedlock on 11.07.2013. However, due to difference between the parties,

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Respondent No.1 left her matrimonial house alongwith Respondent No. 2 on 19.03.2013.

3. Subject petition was filed by Respondent No.1 under Section 125 Cr.P.C contending that she had to leave her matrimonial house on account of incessant demands of dowry by the petitioner and her in-laws. The Respondent also contended that she has no source of income and has to maintain her minor daughter as well and sought for maintenance of at least Rs.10,000/- per month each for herself and for her daughter.

4. Learned counsel for the petitioner has assailed the impugned order on the ground that same is premised on the minimum wages schedule applicable for labour class/unskilled workman. He further submits that the petitioner is just doing repair work of invertors and he is only earning Rs.6,000/- per month. He has further drawn the attention of the Court to the Certificate of Income dated 17.07.2019, issued by the Tehsildar. It is his submissions that the aforesaid certificate was obtained subsequent to passing of the aforesaid order and the same shows the status of the income of the petitioner.

5. Learned counsel for the respondent submits that the aforesaid certificate is issued by the SDM and is not binding. He further submits that the petitioner is rather an owner of a shop which fact is not considered by the Family Court in the impugned order.

6. The Hon'ble Supreme Court in Reema Salkan vs. Sumer Singh Salkan, reported as **2018 SCC Online SC 1643** held as under:

“16. The principle invoked by the High Court for determination of monthly maintenance amount payable to the appellant on the basis

of notional minimum income of the respondent as per the current minimum income of the respondent as per the current minimum wages in Delhi, in our opinion, is untenable...’’

7. A perusal of the impugned order shows that the Family Court has awarded the interim maintenance on the basis of ‘Minimum Wages Scheduled’ applicable w.e.f. 01.11.2018. In view of the decision in Reema Salkan (Supra), the aforesaid assumption of income of the petitioner made by the Family Court is liable to be set aside. Accordingly, in view of the facts and circumstances of the case, the matter is remanded back to the Family Court for fresh consideration.

8. In the meantime, learned counsel for the petitioner, on instructions from the petitioner, submits that without prejudice to his rights and contentions, the order of interim maintenance till date i.e., Rs.48,000/- shall be paid in two instalments. First of such instalment of Rs.25,000/- shall be paid within a period of two day from today and remaining Rs.23,000/- shall be paid within a period of six weeks from today.

9. It is made clear that the aforesaid payment shall be made without prejudice to rights and contentions of either of the parties.

10. The petition is disposed of.

11. A copy of this order be sent to the Trial Court.

Dasti.

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 06, 2019/ssc