

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

CRL.REV.P. 751/2018

Reserved on : 02.12.2019
Decision on : 06.12.2019

IN THE MATTER OF:

CRL.REV.P. 751/2018

SH. ARUN VATS Petitioner

Through: Mr. S.C. Vats, Advocate.
versus

MS. PALLAVI SHARMA & ANR. Respondents

Through: Mr. Rajesh Sharma, Advocate along
with R-1 in person.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The present revision petition has been filed challenging the order dated 05.07.2018 passed by the Family Court in MT No. 696/2016 whereby in the respondent's petition under Section 125 Cr.P.C., an interim maintenance of Rs.33,005/- per month was granted to the respondent/wife and the minor child.

2. In the aforesaid petition, it is the case of respondent/wife that she was thrown out of her matrimonial house and was with her mother at her parental home along with her minor child. It was also stated that she had no source of income and claimed Rs.80,000/- per month as maintenance.

3. It was further stated by the respondent/wife that she had done her LLB and was enrolled as an advocate in the year 2000. She practised briefly prior to her marriage and at the time of filing of her petition, she was pursuing her LLM. She was unable to pursue her profession on account of the young age of her child who was 3 and half years old back then.

4. The petitioner/husband filed his income affidavit before the Family Court wherein it was stated that he was working as an Executive Chef in Convention Hotels Pvt. Ltd., Goa and earning about Rs.88,000/- per month. It was stated that the petitioner/husband has old aged parents to care for and other liabilities towards loan and rent of his accommodation. He was paying maintenance @ Rs.4,000/- per month for the minor child.

5. The Family Court noted that the annual income of the petitioner/husband was Rs.11,31,040/- per annum for the year 2016-17 and his gross income for the year 2017-18 was Rs.8,81,940/- per annum. After deducting the tax paid amounting to Rs. 95,838/-, the Family Court took the net income at Rs.7,86,102/-. The Family Court allotted two units to every member, one unit for the minor child and one extra unit to the petitioner/husband for maintaining his separate household. Thus, after rounding off, the respondent/wife was awarded interim maintenance @

Rs.33,005/- per month for herself and the minor child.

6. Learned counsel for the petitioner/husband has referred to the bio data of the respondent/wife which is stated to have been downloaded from a social website. He has submitted that the respondent/wife is professionally qualified and is earning well. He also submitted that the petitioner was paying rent @ Rs.4,000/- per month vide order dated 16.07.16.

7. During the course of arguments, learned counsel for the petitioner/husband was asked if any document has been filed to support his contention that the respondent/wife was practising and earning. However, he was unable to show any document in support. A perusal of the record would show that besides placing on record the aforesaid bio data of the respondent/wife, which is disputed, the petitioner/husband has not placed any document on record to show that the respondent/wife is actually earning.

8. In Shaliya & Anr. Vs. Khobbana reported as **(2018) 12 SCC 199**, it was held that ‘capable of earning’ and ‘actual earning’ are two different requirements. Merely because wife is capable of earning was held not to be a sufficient reason to reduce the maintenance awarded by the Family Court.

9. The petitioner’s aforementioned contention, in absence of any supporting document, remains a disputed question and needs to be tested in

trial. The Family Court has recorded in the impugned order that any amount paid as maintenance in favour of the respondent/wife and her minor child for the period in question would be liable to be adjusted.

10. In view of the above discussions, I find no illegality or perversity in the impugned order passed by the Family Court. The revision petition is dismissed accordingly. Miscellaneous application is disposed of as infructuous.

MANOJ KUMAR OHRI, J

DECEMBER 06, 2019

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