

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

+ **CRL. REV. P. 368/2020 & CRL. M.As. 16269-16270/2020**

Date of Decision: 25/11/2020

IN THE MATTER OF:

AMIT DHIMAN

..... Petitioner

Through: Mr. Amit Kumar Singh, Advocate.

Versus

BOSKI DHIMAN

..... Respondent

Through: None.

(VIA VIDEO CONFERENCING)

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J. (ORAL)

1. The present revision petition has been instituted under Section 19(4) of the Family Courts Act, 1984 on behalf of the petitioner against the impugned order dated 14.08.2020 passed by the Family Courts, Dwarka, New Delhi in Maintenance Petition No. 878/2017 titled as “*Boski Dhiman Vs. Amit Dhiman*”.

Vide the impugned order, the Family Court has granted interim maintenance to the respondent @ Rs.20,000/- per month from the date of filing of the application till the disposal of the petition.

2. It was stated that at the time of filing of the application, the respondent was unemployed and having no source of income and was completely dependent on her parents.

3. Learned counsel for the petitioner has assailed the impugned order on the ground that the impugned order shows complete non-application

of mind. It is also contended that the respondent is highly qualified and capable of earning. In this regard, he has referred to the bank statements showing financial transactions. Lastly, it is contended that while awarding the interim maintenance, the Family Court did not note the fact that the petitioner's widowed grand-mother is dependent on him.

4. I have heard learned counsel for the petitioner and gone through the pleadings.

5. The parties got married to each other on 10.02.2008. As per the impugned order, the parties have stopped living together since 26.09.2015. The parties filed their income affidavits before the Family Court. The respondent had asked for interim maintenance @ Rs.1,50,000/- pm along with litigation expenses of Rs.1,50,000/-. It was stated that the petitioner is running his own company in the name and style of *M/s Amedeon Consultancy Services Pvt. Ltd.* and was earning more than Rs. 5,00,000/- per month. Besides, it was also stated that the petitioner was earning from other investments.

6. In the reply filed by the petitioner before the Family Court, the petitioner stated his professional qualification as Masters in IT, B.Sc. and declared his income to be Rs. 1,02,582/-. The petitioner admitted that he was running his own company in the name of *M/s Amedeon Consultancy Services Pvt. Ltd.*, however, he denied the earning more than Rs.5,00,000/- per month. It was also stated that he regularly paid an amount of Rs.30,000/- per month to the respondent w.e.f. 26.09.2015 when she left the matrimonial home voluntarily, up till October, 2017 and thereafter an amount of Rs.10,000/- was also paid to her. It was also stated that the respondent being an MCA was highly educated and was earning.

7. During the course of arguments, learned counsel for the petitioner referred to various bank statements of the respondent to highlight the financial transactions. However, a perusal of the same would show that the aforesaid bank statement is from the year 2015 to 03.02.2017, whereas the application seeking interim maintenance has been filed in the month of July, 2017. In the income affidavit filed by the petitioner, he admitted his monthly income at about Rs.1,02,582/-.

8. In Annurita Vohra v. Sandeep Vohra reported as **2004 SCC OnLine Del 192**, it was held as follows:-

“2. In other words the court must first arrive at the net disposable income of the Husband or the dominant earning spouse. If the other spouse is also working these earnings must be kept in mind. This would constitute the Family Resource Cake which would then be cut up and distributed amongst the members of the family. The apportionment of the cake must be in consonance with the financial requirements of the family members, which is exactly what happens when the spouses are one homogeneous unit. Ms. Geeta Luthra, learned counsel for the Respondent, had fervently contended that normally 1/5th of the disposable income is allowed to the Wife. She has not shown any authority or precedent for this proposition and the only source or foundation for it may be traceable to Section 36 of the Indian Divorce Act, 1869. This archaic statute mercifully does not apply to the parties before the Court, and is a vestige of a bygone era where the wife/woman was considered inferior to the husband as somewhat akin to his chattels. The law has advanced appreciably, and for the better. In the face of Legislatures reluctant to bring about any change over fifty years ago the Courts held that the deserted wife was entitled to an equal division of matrimonial assets. I would be extremely loath to restrict maintenance to 1/5th of the Husband's income where this would be insufficient for the Wife to live in a manner commensurate with her Husband's status or similar to the lifestyle enjoyed by her before the marital severance. In my view, a satisfactory approach would be to divide the Family Resource Cake in two portions to the

Husband since he has to incur extra expenses in the course of making his earning, and one share each to other members.”

9. The issue whether the wife can be denied maintenance only on account of the fact that she is capable of earning, came before this Court in Arun Vats v. Pallavi Sharma reported as **2019 SCC OnLine Del 11817**, wherein while relying on the decision rendered in the case of Shailja & Anr. v. Khobbanna 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 be a sufficient reason to reduce the maintenance awarded by the Family Court.

10. In *Crl. Rev. P. 590/2018* titled as Sarwan Kumar Sharma v. Ranjana Sharma @ Ranjana Rani & Anr. decided on 24.02.2020, this Court had the occasion to deal with the expression ‘unable to maintain herself’. It was held that it does not mean that the wife must be absolutely destitute before she could apply for the maintenance under Section 125 of the Code of Criminal Procedure. [Refer: Chaturbhuj v. Sita Bai reported as **(2008) 2 SCC 316** and Vinny Parmvir Parmar v. Parmvir Parmar reported as **(2011) 13 SCC 112**]. Reference was also made to the following observations of the Supreme Court in Sunita Kachwaha & Ors. v. Anil Kachwaha reported as **(2014) 16 SCC 715** :-

“8. The learned counsel for the respondent submitted that the appellant-wife is well qualified, having post graduate degree in Geography and working as a teacher in Jabalpur and also working in Health Department. Therefore, she has income of her own and needs no financial support from respondent. In our considered view, merely because the appellant-wife is a qualified post graduate, it would not be sufficient to hold that

she is in a position to maintain herself. Insofar as her employment as a teacher in Jabalpur, nothing was placed on record before the Family Court or in the High Court to prove her employment and her earnings. In any event, merely because the wife was earning something, it would not be a ground to reject her claim for maintenance.”

11. A perusal of the order would also show that while passing the impugned order, the Family Court has bifurcated the family cake into five pieces, giving two shares each to the petitioner as well as his parents and giving only one share to the respondent. In his Income affidavit, the petitioner has admitted having paid Rs.30,000/- pm to the respondent from 26.09.2015 to October 2017, which was prior to passing of the order granting interim maintenance. Even at that time, the petitioner had three dependent family members.

12. Thus, in view of the decision in Annurita Vohra (Supra), and in the absence of any proof that the respondent is earning, I find no ground to interfere in the order on interim maintenance passed by the Family Court.

13. The revision petition is accordingly dismissed along with the pending applications.

(MANOJ KUMAR OHRI)
JUDGE

NOVEMBER 25, 2020

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