

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

+ CRL. REV. P. 331/2020 & CRL. M.A. 14271/2020 (Stay)

Date of Decision: 01.12.2020

IN THE MATTER OF:

BHARAT VOHRA Petitioner
Through: Mr. Neeraj Kumar, Advocate

Versus

GOVT OF NCT OF DELHI & ORS. Respondents
Through: Ms. Manjeet Arya, APP for State
Ms. Archana Sharma, Advocate for respondent
Nos. 2 & 3

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI
(VIA VIDEO CONFERENCING)

MANOJ KUMAR OHRI, J. (ORAL)

1. The present revision petition has been filed under Section 19(4) of the Family Courts Act read with Section 397 Cr.P.C. challenging the order dated 24.07.2020 passed by the Family Court, Dwarka, New Delhi in MT No. 734/18, whereby in an application seeking interim maintenance, the Family Court directed the petitioner to pay a sum of Rs.5,000/- each per month to the respondent nos. 2 & 3 from the date of the filing of the application.

2. Learned counsel for the petitioner contended that the Family Court while granting interim maintenance failed to appreciate that respondent no. 2 is well educated and earning well to maintain herself and respondent no. 3. It was also contended that the impugned order shows

complete non-application of mind as the bank account of respondent no. 2 shows transactions of various amounts. It was also stated that the petitioner's mother is completely dependent on him and is living along with him.

3. Learned counsel for the respondents, on the other hand, supported the impugned order.

4. I have heard learned counsels for the parties and have also gone through the case records.

5. The petitioner and respondent no.2 got married to each other as per Hindu rites and ceremonies on 25.02.2016 at New Delhi. A child, *Master Vihan Vohra* (respondent no. 3 herein) was born out of their wedlock. On account of the matrimonial differences, the parties started living separately.

6. The respondent nos. 2 & 3 filed an application seeking maintenance. Respondent no.2 filed her income affidavit claiming that she had no source of income and was completely dependent upon her parents. It was claimed that the petitioner was having an income of Rs. 2 lacs per month, however, no documentary proof of the same was placed on the record

7. The petitioner also filed his income affidavit stating monthly income of Rs.19,000/- per month. He also placed his Income Tax Returns for the assessment years 2016-17, 2017-2018 and 2018-2019 on the record. The Trial Court on the basis of the aforesaid, assessed the petitioner's monthly income to be between Rs. 20,000- Rs.30,000. It was claimed that respondent no.2 was working, however, no proof was placed on record.

8. The Trial Court after evaluation of pleadings, income affidavit, and documents placed on the record, held the petitioner's average monthly income to be Rs.25,000/-.

9. In these facts, the petitioner's income is to be divided in terms of the decision rendered in Annurita Vohra v. Sandeep Vohra reported as **2004 SCC OnLine Del 192**, where 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.”

10. In Sarwan Kumar Sharma v. Ranjana Sharma @ Ranjana Rani & Anr. in CRL. REV.P. 590/2018 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 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. In terms of the above decisions and the facts and circumstances of the case, this Court is of the view that the Family Court has correctly divided the petitioner’s monthly income into five shares out of which two shares were given to the petitioner and one share was given for his

mother. The remaining two shares were given to respondent nos. 2 & 3. So far as the aspect of grant of maintenance from the date of filing of the application is concerned, the Supreme Court in Rajnesh v. Neha & Anr. reported as **2020 SCC OnLine SC 903** held as follows:-

“79. It has therefore become necessary to issue directions to bring about uniformity and consistency in the Orders passed by all Courts, by directing that maintenance be awarded from the date on which the application was made before the concerned Court. The right to claim maintenance must date back to the date of filing the application, since the period during which the maintenance proceedings remained pending is not within the control of the applicant.”

12. Accordingly, this Court finds no illegality, infirmity or perversity in the order passed by the Family Court. Resultantly, the revision petition is dismissed along with the pending application.

13. A copy of this order be communicated electronically to the concerned Family Court.

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 01, 2020
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