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

**CRL.REV.P. 235/2020, CRL.M.A. 5660/2020 and CRL.M.A. 5662/2020**

Date of Decision: 24.09.2021

**IN THE MATTER OF:**

AARTI SHARMA ..... Petitioner

Through: Mr. Jatin Mongia and Mr. Akshit Mohan, Advocates

versus

KUNAL BHAGI ..... Respondent

Through: Mr. A.K. Pandey, Advocate with respondent in person

**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, 1984 read with Section 397 Cr.P.C. assailing the order dated 03.10.2019 passed in Interim Application No. 01/19 in MT. No. 1053/17 by the learned Judge, Family Courts, Dwarka, New Delhi.

2. Brief facts of the case, as noted by the Family Court in the impugned order, are as under:-

> *"5. ... It is not in dispute that marriage of the petitioner was solemnised with respondent as per Hindu rites and customs on 24.04.2016 according to Hindu rites and ceremonies. The marriage was duly consummated but no child is born from their wedlock. It is also not in dispute that there are certain differences between the parties, due to which they have been living separately.*

*6. The petitioner has claimed that she has no source of income and completely dependent upon her parents for her day to day needs and expenses whereas respondent is working as Senior Executive (Accounts) in M/s Motherson Sumi Infotech & Designs Limited, Noida and drawing monthly salary of approximately Rs. 52,000/- per month with other perks and benefits. He is also getting Rs. 10,000/- as rent from ground floor property. The respondent has no other liability except to maintain the petitioner but he has deliberately neglected to maintain her.*

*7. The respondent has controverted the said plea and averred that petitioner is a Teacher and also giving home tuitions and earning more than Rs. 35,000/- per month but has not adduced any cogent proof to support the said plea. In the absence of any cogent proof, the plea of respondent that petitioner is earning Rs. 35,000/- per month is discarded."*

3. Learned counsel for the petitioner submits that initially the petitioner was granted ad interim maintenance @ Rs.15,000/- per month vide order dated 19.04.2018, however later, on the receipt of documents filed by the respondent including his bank statements for the last three years as well as Form 16 Part B of his IT returns for the financial year 2017-18, the same was revised to Rs.7,300/- vide the impugned order, even though earlier, the respondent's application seeking review of the order dated 19.04.2018 was dismissed vide order dated 12.07.2018. It is submitted that the respondent had challenged the orders dated 19.04.2018 and 12.07.2018 by way of CRL.M.C. No. 257/2019 before this Court, but the petition also came to be dismissed vide order dated 18.01.2019.

4. Learned counsel further submits that the impugned order is being assailed primarily on the ground that while apportioning the shares of the parties, the Family Court has incorrectly included the parents of the respondent in the list of dependents and divided the family cake amongst

four persons instead of two. It is submitted that the father of the respondent is a pensioner having retired from Railway Board, Ministry of Railways, Government of India and as such, is not dependent on the respondent. It is also submitted that the respondent's mother is living alongwith his father.

5. Learned counsel for the respondent has fairly confirmed that the respondent's father is a pensioner. He has, however, submitted that the petitioner being a Teacher is well-qualified and is capable of earning. It is also submitted that the petitioner is giving home tuitions.

6. On a perusal of the impugned order, it is apparent that the Trial Court came to the conclusion that the respondent did not bring any material on record in support of his claim. The respondent's submission was rejected in view of the decision of the Supreme Court in Sunita Kachwaha and Others *v.* Anil Kachwaha reported as **(2014) 16 SCC 715**.

7. The Trial Court further took note of the respondent's submission that he was working as a Team Leader and earning Rs. 36,000/- per month. As per the salary slip for the month of July 2018, his net pay after deductions came to be Rs. 36,568/-. In Annurita Vohra *v.* Sandeep Vohra reported as **2004 SCC OnLine Del 192,** the Delhi High Court in connection with the issue at hand has noted thus:-

> *"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 commensurative with her Husband's status or similar to the lifestyle enjoyed by her before the marital severance. <u>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</u>."*

(emphasis added)

8. In terms of the aforesaid decision, the family cake has to be divided considering the number of family members. Taking into account the respondent's net pay after deductions as Rs.36,568/- and while keeping two shares for the respondent and one share for the petitioner, the interim maintenance comes to be around Rs.12,190/- from the date of the application. Accordingly, the impugned order is set aside and the respondent is directed to pay interim maintenance @ Rs.12,190/- on or before 7th day of each English calendar month from the date of the application.

9. At this stage, learned counsel for the respondent, on instructions, submits that entire arrears will be paid within a period of six months.

10. The statement made on behalf of the respondent in the Court today is taken on record and he is made bound by the same.

11. It is made clear that at the time of passing of final order on maintenance, if the Family Court reaches a conclusion that any higher or lesser amount is to be granted, the amount paid by the respondent as interim maintenance shall be adjusted accordingly.

12. With the above directions, the petition is disposed of alongwith the pending applications.

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

**MANOJ KUMAR OHRI**
**JUDGE**

**SEPTEMBER 24, 2021**
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*Click here to check corrigendum, if any*