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

+ **CRL.REV.P. 483/2024 & CRL. MA 10974/2024**

SH MANOJ JAIN

.....Petitioner

Through: **Mr. Anil Kumar Pruthi, Advocate.**

versus

SMT SHRUTI JAIN AND ANR

.....Respondents

Through: **Ms. Mansi Sharma and Mr. Prabhat
Kumar Adil, Advocates**

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

26.09.2024

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1. By way of present petition, the petitioner seeks to assail the order dated 13.12.2023 passed by the learned Family Court, East District, Karkardooma Court, Delhi in MT No.119/2022 titled as '*Shruti Jain & Ors. V. Manoj Jain*', whereby in the proceedings initiated under Section 125 Cr.P.C. by the respondents herein, the learned Family Court directed the petitioner to pay interim maintenance of a total sum of Rs.18,500/- per month to the respondents (Rs.9,250/- towards each respondent).

2. Learned counsel for the petitioner submits that the petitioner has taken an objection to the income affidavit filed on behalf of the respondent No.1, on the ground that the same was unsigned. He further submits that the respondent No.1 has herself stated that prior to the marriage, she was employed on contractual basis. It is also stated by the petitioner that the respondent No.1 is more qualified than the petitioner and capable of higher earning.



3. The instant petition has been resisted by the learned counsel for the respondents, who submits that the respondent No.1 has clearly stated in her maintenance petition that after marriage, she has not been employed and the same fact was specifically stated in the income affidavit filed by her. The petitioner and respondent No.1 have a four year old daughter who is in the custody of the respondent No.1. The petitioner, in his income affidavit, has claimed his income to be Rs.37,000/- per month, however, the same is disputed on behalf of the respondents.

4. A perusal of the impugned order would show that the learned Family Court has divided the income into four portions and granted two out of the four portions to the respondents. The decision passed by the learned Family Court is in line with the decision of the Coordinate Bench of this Court in Annurita Vohra v. Sandeep Vohra reported as **110 (2004) DLT 456**, as noted in paragraph 8 of the impugned order.

Further, reliance is placed on Shaliya v. Khobbana, reported as **(2018) 12 SCC 199**, wherein the Supreme Court has clarified that ‘*capable of earning*’ and ‘*actual earning*’ are two different requirements. Merely because the wife is capable of earning was held to not be a sufficient reason to reduce the maintenance awarded by the Family Court.

5. Considering the fact that the maintenance petition is still pending consideration before the learned Family Court and further considering the aforementioned facts and circumstances, this Court finds no ground to interfere with the impugned order.

6. The petition is accordingly disposed of along with pending application.

7. Needless to state, on the consideration of the aforesaid maintenance



petition, in case any further evidence comes on record, the Family Court would be at liberty to grant lesser or higher maintenance, accordingly.

MANOJ KUMAR OHRI, J

SEPTEMBER 26, 2024/rd