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

+ **CRL.REV.P. 655/2023 & CRL.M.A. 15559/2023**

RISHI RAJ

.....Petitioner

Through: Mr. Vijay Kinger, Mr.
Ashwani Gahlot & Ms.
Roopa Nagpal, Advs.

versus

JYOTI UPADHYAY

.....Respondent

Through: Mr. Ankur Sharma, Adv.
(through VC)

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

27.08.2024

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1. The present petition is filed challenging the order dated 27.01.2023 passed by the learned Additional Sessions Judge-02 ('**ASJ**'), Rohini Courts, Delhi (hereafter '**impugned order**') in CA No. 177/2022 titled *Jyoti Upadhyay v. Rishi Raj*.

2. The petitioner's appeal under Section 29 of the Domestic Violence Act, 2005, challenging the order dated 26.09.2022, passed by the learned Metropolitan Magistrate ('**MM**'), Rohini Court, Delhi was dismissed by the impugned order.

3. The learned MM, by order dated 26.09.2022, awarded an interim maintenance for a sum of ₹6000/- per month to the respondent and ₹4,000/- per month as maintenance of the child of the parties.

4. The learned ASJ, *vide* the impugned order, allowed the appeal filed by the respondent for enhancement of interim maintenance, specifically noting that the salary of the petitioner

CRL.REV.P. 655/2023

Page 1 of 4



is about ₹42,000/- per month and directed the petitioner to pay a sum of ₹21,000/- per month as interim maintenance to the respondent.

5. The learned counsel for the petitioner submits that the learned ASJ has failed to appreciate that in addition to the rent, the petitioner is also paying an EMI of ₹26,000/- towards a loan which he had taken prior to his marriage.

6. The learned ASJ, after reviewing the petitioner's income affidavit, observed that the petitioner is employed as an Assistant Teacher in a Primary School in UP, earning a monthly salary of ₹50,950/-. It was further noted that the respondent had submitted the petitioner's salary slip for March 2022, corroborating this amount. Consequently, it is an admitted income, as it was also acknowledged by the petitioner in his own income affidavit.

7. This Court by order dated 31.05.2023, had stayed the operation of the impugned order and the petitioner was directed to pay a sum of ₹15,000/- per month as interim maintenance, taking into account the fact that the learned ASJ had failed to appreciate that the petitioner is also serving a loan obtained prior to his marriage.

8. In the present case, the petitioner is an Assistant Teacher in a Primary School in UP, earning a monthly salary of ₹50,950 and has no dependents. It is stated that the custody of the child is also with the respondent.

9. Be that as it may, even considering that the salary of Respondent No. 1 is approximately, ₹42,000/-, a sum of ₹6000/- for the respondent and ₹4,000/- is too meagre for the sustenance of the wife and the child considering that it also includes other ancillary expenses. It is also pertinent to note that the petitioner has no dependents. It is well settled that a husband cannot shirk



his sacrosanct duty to financially support his wife. The Hon'ble Apex Court, in the case of **Anju Garg and Anr. v. Deepak Kumar Garg : 2022 SCC Online SC 1314**, observed as under:

*“10.... The Family Court had disregarded the basic canon of law that it is the sacrosanct duty of the husband to provide financial support to the wife and to the minor children. **The husband is required to earn money even by physical labour, if he is an able-bodied, and could not avoid his obligation, except on the legally permissible grounds mentioned in the statute....**”*

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13. Though it was sought to be submitted by the learned counsel for the respondent, and by the respondent himself that he has no source of income as his party business has now been closed, the Court is neither impressed by nor is ready to accept such submissions. The respondent being an able-bodied, he is obliged to earn by legitimate means and maintain his wife and the minor child....”

(emphasis supplied)

10. This Court in **Annurita Vohra v. Sandeep Vohra : 2004 (74) DRJ 99** had laid down certain principles in regard to division of the family income. It was held that the court should initially determine the net disposable income of the Husband or the primary earner within the family. If the other spouse is also employed, those earnings should be taken into consideration. This collective income forms the Family Resource Cake, which is then distributed among the family members. The allocation of this "cake" should align with the financial needs of each family member, and an equitable approach would involve dividing the Family Resource Cake into two portions for the Husband, acknowledging his additional expenses incurred in earning, and one portion each for the other members.

11. In such circumstances, in my opinion, the interim monthly maintenance of ₹21,000/-, as awarded by the learned ASJ in the impugned order seems reasonable.



12. It is not disputed that the impugned order is only an order of interim maintenance. The defences raised by the parties, along with the allegations and counter allegations, would be the subject matter of trial, and would have to be decided after the parties have led their evidence.

13. The present petition is dismissed in the aforesaid terms. The learned Trial Court is directed that the final order be passed in the case being uninfluenced by the observation made in the present order.

AMIT MAHAJAN, J

AUGUST 27, 2024