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

Date of decision: 08th OCTOBER, 2024

IN THE MATTER OF:

+ **CRL.M.C. 3079/2022 & CRL.M.As. 32524/2023, 3975/2024**

PRIYANKA DHAWAN

.....Petitioner

Through: Ms. Mansi Bhushan, Adv.

versus

NAVDEEP DHAWAN

.....Respondent

Through: In person

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. This petition challenges the order dated 27.04.2022 passed by the learned Appellate Court in CA Nos.36/2022 and 37/2020. The learned Metropolitan Magistrate on 12.02.2020 directed the husband / Respondent to pay interim maintenance of Rs.50,000/- for the Petitioner as well as her minor son with effect from the date of the order till the disposal of a case under the Protection of Women from Domestic Violence Act, 2005 (in short 'DV Act') and the adjustment shall be made at the time of final order.
2. Both the parties filed aforesaid Criminal Appeals against the order passed by the learned Trial Court and aforesaid appeals were disposed of on 27.04.2022 directing the Respondent to pay Rs.50,000/- towards interim maintenance with effect from the date of filing of the DV Act case. Petitioner has filed this petition for enhancement of the interim maintenance.
3. Shorn of unnecessary details, the facts leading to the revision petition are as follows:-



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- a) The marriage between the Petitioner and the Respondent was solemnised as per Hindu rites and ceremonies on 19.10.2008 at New Delhi. A son was born out of wedlock on 2013. Disputes arose between the parties in March, 2018, which has resulted in multiple proceedings.
- b) The Petitioner filed a complaint under the Protection of Women from Domestic Violence Act, 2008, on 05.11.2018 before the Trial Court.
- c) On 12.02.2020, the Trial Court awarded interim maintenance for the Petitioner and her minor son of Rs.50,000 from February, 2020 to be paid from the date of the order.
- d) By way of the impugned order the appeal filed by the Petitioner and Respondent were heard together. The appellate court after going through the pleadings and trial court's order came to a finding that the decision of the Trial Court to award maintenance @ Rs.50,000/- per month does not require any interference. The parties had placed their income affidavits on record as the income of the husband has been assessed at Rs. 1,55,851/- per month by the Trial Court. The Appellate Court has held that keeping in mind the income of the husband, the Trial Court/learned MM has granted interim maintenance of Rs. 50,000/- per month however the learned MM but has not assigned any reason as to why interim maintenance has been granted with effect from the date of order i.e. 12.02.2020. The Appellate Court modified the order of the learned MM by directing payment of interim maintenance of Rs. 50,000/- per month from the date of filing the petition/complaint. The



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appellate court also held that the wife (Petitioner herein) and the minor child are living on the ground floor of matrimonial house/purported shared household so they can't be dispossessed from the said portion. The appeal of the husband was dismissed and the appeal filed by the wife was partly allowed.

- e) The trial Court after going through the pleadings, income affidavits etc, held that the Petitioner has alleged various acts of domestic violence in the form of economic, physical, verbal and emotional abuse. Allegedly, she was physically abused by Respondent on 03.11.2017 which is sufficient to form a prima facie opinion that the Petitioner is an aggrieved person. On the issue of income, the Trial Court has held that the Petitioner did not submit any verifiable document to show that the Respondent earns around Rs. 2 lakh, therefore as per his income affidavit, his monthly income is assessed as admitted by him to be Rs. 1,55,851 per month. The monthly expenditure of Petitioner is claimed to be Rs.1,07,300 as disclosed in the affidavit filed by her but no receipt of school fee payment receipt, bill receipts of grocery, personal care, etc have been furnished. The monthly income of the Petitioner is shown as Rs. 7,037 in the affidavit filed by her. Admittedly, since Jan 2018, the Respondent has been paying Rs. 20,000 per month towards maintenance. Considering the income, assets of the Petitioner, and the needs of her and her minor child, Rs. 50,000 per month towards interim maintenance for herself and her son is sufficient.



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- f) The Petitioner had challenged the order by filing an appeal under Section 29 of the DV Act for enhancement of maintenance and notice was issued to the Respondent on the said date.
- g) On 27.04.2022, the appellate court partly allowed the appeal of the Petitioner by allowing the interim maintenance of the Petitioner and her son from the date of filing of the Petition under the Domestic Violence Act but denied enhancement of maintenance and other reliefs sought by the Petitioner. The Petitioner is aggrieved by this order.

4. The Petitioner submits that she has been subjected to cruelty immediately after her marriage. The Petitioner submits that the Respondent was working as the Associate Director at Nagaro Software Pvt. Ltd, he was then promoted to the post of Director at Nagato Software Pvt. Ltd, and is earning more than Rs. 2,00,000/- per month. The Petitioner further submits that the monthly salary from the salary slip of March 2024 is around Rs.2,22,347.5 and the Petitioner claims a maintenance of Rs. 1,11,173.75/-. The Petitioner submits that vide Order dated 30.04.2024, this court directed the Respondent to provide an affidavit of his bank statement for the last one year but the Respondent has not complied with the order. He has only placed Statements of the ICICI Bank from May, 2023 till April, 2024. The Petitioner submits that the Respondent has concealed his current monthly income and other bank and credit card statements despite Order dated 30.04.2024. The Petitioner submits that the Respondent lives a lavish lifestyle and has shifted to a place where he has to pay Rs.51,000/- rent which is a deliberate attempt to multiply his expenses. The Petitioner further submits that the expenses of his son have increased manifold in the last four



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years. The Petitioner submits that the Respondent has repaid the entire personal loan of Rs. 10,00,000/- in July, 2020 therefore his expenses have reduced after such period and the Petitioner further submits that the Trial Court awarded the interim maintenance without dealing with all the contentions and other reliefs sought by the Petitioner. The Petitioner submits that an independent assessment of income was not made by the Appellate Court and the court failed to consider that the Respondent has concealed his income from other sources like rental income, investments, etc. by not declaring the same in the affidavit. The Petitioner also submits that the appellate court has passed the order in a hasty manner and the appellate court did not pass any order regarding the jewellery which was taken out of the joint locker of the parties vide order dated. 23.11.2021, it is lying open in the custody of the bank without any safety. The Petitioner further submits that that she is entitled to the same lavish lifestyle which they were enjoying when the parties were living in a consortium.

5. The Respondent submits that the Petitioner has concealed her current sources of income. The Respondent submits that the Petitioner has not filed the Income Tax Returns and has concealed her income and savings. The Respondent also submits that the Petitioner is capable of earning. She was employed earlier as a Senior Merchandiser with Thought Bubble Consulting, earning Rs. 37,000/- per month. The Respondent further submits that the Petitioner is enjoying free accommodation on the ground floor of his sister's house whereas he is living in a rented accommodation. The Respondent further submits that he was voluntarily paying Rs.20,000/- to the Petitioner prior to the order of the Trial Court. The Respondent submits that the Petitioner has deposits of more than Rs.14 lakhs in her bank accounts besides her monthly income. The Respondent further submits that



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the Petitioner has not provided any bills, proof of her expenditure and has been awarded interim maintenance which is more than what she is legally entitled. The Petitioner has now allowed the Respondent to meet the minor child. The Respondent submits that the Petitioner has not provided any evidence in the case under the Protection of Women from Domestic Violence Act, 2005 despite the orders of court.

6. Heard learned Counsel for the Petitioner and the Respondent, who appears in person, and perused the material on record.

7. A perusal of the income affidavits and the parties' pleadings shows that the parties are well qualified. The Petitioner, in the course of the Petition, has been able to secure the salary slips of the Respondent and the same has been filed before this Court. The correctness of the same has not been disputed by the Respondent. The income affidavit of the Respondent indicates that the Respondent had a monthly net income of Rs. 1,55,000/- per month and a monthly expenditure of Rs. 1,00,000/-. He is residing in a rented accommodation. However, he gets House Rent Allowance (HRA) for the same. In addition to this, the Respondent has certain immovable properties. The Petitioner is unemployed though well-qualified. As per her income affidavit, she has a monthly income of Rs.7,037/- from FDRs and has a savings account. It is not disputed that a child is born out of wedlock, the child is school-going. The Petitioner has filed this appeal claiming enhancement of interim maintenance from Rs. 50,000/- per month to Rs.1,40,000/- based on the current salary of the Respondent.

8. Before adjudicating the facts of this case, it is important to signify the legal position of the issue at hand. It is well settled that every able-bodied husband has a duty to maintain his wife who is unable to maintain herself. The maintenance should be such that the aggrieved party is able to live with



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a standard as is being enjoyed by the party granting maintenance, the purpose of maintenance is for the wife to live a lifestyle that was being led while living in consortium. In the case of Manish Jain v. Akanksha Jain, (2017) 15 SCC 801, the apex court held that an order of interim maintenance is dependent on the circumstance that the party who claims maintenance has no independent income, sufficient for his or support. The claim of maintenance can't be denied on the ground that the wife is educated and could support herself. The court has to look at the status of the parties, capacity of the spouse to pay. The court has to consider various factors before granting maintenance like the income of the spouse, expenses for his or her own sustenance, dependent members, liabilities to arrive at the quantum of maintenance to be paid. The standard of living of the spouse and the inflation rates must also be considered.

9. It is well settled that the object of granting maintenance is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of failure of marriage. The Petitioner is taking care of the child and it is the duty of the Respondent to provide for the expenses for the child. The fact that the Petitioner is capable of earning income cannot be a factor for the courts to reduce the amount of maintenance. The Petitioner has to ensure that her child is brought up properly and this Court cannot ignore the fact that women in this country sacrifice their career in the interest of their family and to raise the children. It is the moral and legal obligation on the part of the husband to provide and ensure that the child gets proper education and the spouse is able to live comfortably.

10. Coming to the question as to from when the maintenance is to be awarded. The issue is no longer *res integra* and has been covered by the



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Apex Court in Rajnish v. Neha, (2021) 2 SCC 324. The relevant portion of the said judgment reads as under:-

"109. The judgments hereinabove reveal the divergent views of different High Courts on the date from which maintenance must be awarded. Even though a judicial discretion is conferred upon the court to grant maintenance either from the date of application or from the date of the order in Section 125(2) CrPC, it would be appropriate to grant maintenance from the date of application in all cases, including Section 125 CrPC. In the practical working of the provisions relating to maintenance, we find that there is significant delay in disposal of the applications for interim maintenance for years on end. It would therefore be in the interests of justice and fair play that maintenance is awarded from the date of the application.

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113. 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 court concerned. 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."

11. Applying the law laid down by the Apex Court to the facts of the present case, it can be seen that in the month of October, 2023, the Respondent was earning Rs.2,67,427/-. The pay slip of the Respondent shows that out of the total earning Rs.2,67,427/-, and the deductions were of Rs.1,40,029/- whereby his net income was Rs.1,27,398/-. As on March, 2024, the pay slip of the Respondent as filed by the Petitioner indicates that the



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Respondent is earning Rs.4,55,797/- but at the same time, the deductions has increased to Rs.2,15,484/- and the net pay is Rs.2,40,313/-.

12. This Court cannot lose sight of the fact that as on March, 2024, the Respondent having a net pay of Rs.2,40,313/-. Keeping in mind the inflation rates and the rise in cost of living, this Court is inclined to increase the amount of maintenance to Rs.75,000/- per month to be paid to the Petitioner and the minor child by the Respondent/husband. This Court is increasing the amount of maintenance to Rs.75,000/- and the order of the Appellate Court directing payment of Rs.50,000/- as maintenance does not require any interference. However, the sum of Rs.75,000/- as fixed by this Court should be paid from 01.11.2024.

13. With these observations, the petition is disposed of along with pending application if any.

SUBRAMONIUM PRASAD, J

OCTOBER 08, 2024

hsk/MP