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

+ **CRL.REV.P. 860/2023 & CRL.M.A. 22135/2023**

SANDEEP SHARMA Petitioner
Through: Mr. Ashutosh Kaushik,
Adv. (with petitioner is
person)

versus

POOJA SHARMA @ NIKKI Respondents
Through: Mr. Brijesh Kumar
Sharma, Adv. (through
VC)

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
21.03.2024

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1. The present petition is filed under Section 397 of the Code of Criminal Procedure, 1973 challenging the order dated 27.03.2023, passed by the learned Family Court, Karkardooma Court, Delhi in MT Case No. 233/2021 (hereafter '**impugned order**').

2. By way of the impugned order the learned Family Court had granted interim maintenance of Rs. 14,000/- per month to the child of the petitioner, from the date of the filing till the child attains the age of majority.

3. The learned Counsel for the petitioner submits that the learned Family Court has erroneously assessed the income of the petitioner.

4. He submits that there was no basis for assessing the income of the petitioner as ₹45,000/- per month.

5. On being pointedly asked, as to how much maintenance
CRL.REV.P. 860/2023

Page 1 of 3



the petitioner is willing to pay *qua* his minor child, the learned counsel for the petitioner submits that the petitioner is not in a position to pay anything. He submits that the petitioner has lost his job and is earning Rs.8000/- per month, by giving home tuitions and he also has his parents and two un married sisters dependent upon him.

6. The learned Family Court while passing the impugned order had noted:

“...It belies common sense that somebody who is earning Rs. 8000/- and has the liability to maintain parents and unmarried sister would pay EMI of Rs. 10,172/- per month to HDFC bank till 08.02.2021. The respondent in his affidavit has claimed that he has filed ITR for the year 2016-2017 and 2017-2018 but he has neither filed the ITR nor computation of income. ‘The computation of income would have positively revealed whether he was working as a consultant in the tuition centre or was the owner. However, at this stage on the basis of guess-work, the income of the respondent is assessed to be Rs. 45,000/- per month. It has claimed that a sum of Rs. 3000/- is spent by him on account of the dependent, after deducting the said amount, the net income would be Rs. 42,000/-”

7. The petitioner is present in person in the Court, and is an able-bodied man. His contention that he is unable to get work after COVID-19 cannot be accepted. 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)

8. It is also common knowledge and has been observed by this Court in many cases that it is a normal tendency of the parties, especially in matrimonial disputes to not disclose their true income. The Courts in such circumstances are permitted to make some guess work and arrive at a figure that a party may reasonably be earning. [Ref:*Bharat Hegde v. Saroj Hegde*:2007 SCC OnLine Del 622]

9. The learned Family Court noted that the petitioner was paying an EMI of ₹10,172/- per month to HDFC Bank till 08.02.2021. It also noted that the petitioner is an educated man and is giving home tuitions. In such circumstances, assessing the income of the petitioner at ₹45,000/- per month is not unreasonable.

10. The relationship between the parties is admitted and the amount is directed to be paid to the petitioner's child. Moreover, the order passed by the learned Family Court is only for the purpose of interim maintenance. A final order will be passed after taking the evidence on record.

11. In view of the above, this Court finds no reason to interfere with the impugned order and the petition is, therefore, dismissed.

AMIT MAHAJAN, J

MARCH 21, 2024

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