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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.REV.P. 269/2018 CRL.M.A. 5672/2018 CRL.M.A. 35785/2018
MERAJ ANWAR KHANPetitioner

Through: Mr. Vipin Bhaskar, Advocate.

versus

RUBY SHABANA & ANRRespondent
Through: Ms. Shabeena Khan, Advocate.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
05.12.2024

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1. This petition has been filed, impugning the judgment dated 4th September 2017 in M No. 205/2013, granting final maintenance at Rs.10,000/- per month to the wife and Rs.5,000/- per month to the minor daughter, of the petitioner.
2. The Court has perused the impugned judgment. It is imperative to consider that, the impugned order was passed *ex parte* since the petitioner/husband had chosen not to appear before the Court. As per the record, the petitioner did not appear before the Family Court after 15th January 2015, despite the counsel having filed his *vakalatnama* in February 2014.
3. The Court, considering the *ex parte* situation, and basis non-contest by the petitioner, proceeded to hold the contention of the respondent/wife, that she is a unemployed, to be true. The Court further noted that both the



children, born out the wedlock, are in the care and custody of the respondent/wife.

4. The Court took note of the salary slip of the petitioner, which reported his monthly income at Rs. 49,898/-

5. Basis the income of the petitioner, as also, the needs of the respondents for sustenance, the Court awarded Rs. 10,000/- to the respondent/wife and Rs. 5,000/- to their minor daughter, from the date of filing of the petition, i.e. 21st November 2023. An annual increase of 7%, on the said amount, was awarded, with a direction to clear the arrears within 12 months. Litigation expenses were calculated at Rs. 11,000/-.

6. The petitioner was proceeded *ex parte*, vide order dated 8th December 2015. The said impugned order has been passed, after two years from the order for *ex parte* proceedings. It is pertinent to note that, for more than two years from the date of the order directing *ex parte* proceedings against the petitioner, no steps were taken by the petitioner to challenge the same.

7. This petition was filed by the petitioner impugning the said order in 2018 and the matter has been on the Board of this Court, since.

8. The impugned order records various allegations of cruelty towards the respondent/wife; **firstly**, during her pregnancy, her husband (petitioner) confiscated her *stridhan*; **secondly**, upon coming to know that she is pregnant with a female child, she was kicked out of her matrimonial home and subsequently gave birth to the child on 20th August 2011.

9. With the intervention of family member, an amicable resolution was reached, and the petitioner took the respondent back to his native home, but on, 19th August 2012, she was again 'kicked' out of her matrimonial home.

10. Resultantly, FIR No. 162/12 was registered under section 379/498A



IPC and Section 3/4 PWDV Act. The petitioner was released on interim bail, basis the condition that he will reside with the respondent and treat her with care and dignity.

11. However, following her subsequent pregnancy, the petitioner again left the respondent at her parental home.

12. The petitioner did not contest the factum of marriage and paternity, but denied any allegations of cruelty, stating that the respondent left the company of her husband willingly since she was not satisfied with the medical facilities available at the petitioner's native place. Petitioner pleaded that he deposited INR. 50,000/- for medical expenses during her pregnancy.

13. The thrust of the petitioner's argument has been on the contention that the respondent is a well-educated woman, however, the mere fact that the wife is educated, cannot be a ground to deny her maintenance. Following decisions of the Supreme Court, and this Court are instructive in this regard:

i. **Manish v. State (NCT of Delhi)** 2024 SCC OnLine Del 6607:

“42. Insofar as the argument regarding Respondent No. 2 being educated is concerned, it is relevant to note that no evidence has been adduced by the petitioner to show that she is capable to maintain herself. Merely because Respondent No. 2 is educated, the same alone is not a ground to deny her maintenance.”

(emphasis added)

ii. **Manish Jain v. Akanksha Jain** (2017) 15 SCC 801:

“16. An order for maintenance pendente lite or for costs of the proceedings is conditional on the circumstance that the wife or husband who makes a claim for the same has no independent income sufficient for her or his support or to meet the necessary expenses of the proceeding. It is no answer to a claim of maintenance that the wife is educated and could support herself. Likewise, the financial position of the wife's parents is also immaterial. The court must take into consideration the status of the



parties and the capacity of the spouse to pay maintenance and whether the applicant has any independent income sufficient for her or his support. Maintenance is always dependent upon factual situation; the court should, therefore, mould the claim for maintenance determining the quantum based on various factors brought before the court.”

(emphasis added)

iii. **Nidhi Sudan v. Manish Kumar Khanna** 2023 SCC OnLine Del 7652:

*“13. Admittedly, the interim maintenance has to be decided on the basis of pleadings and the income and assets affidavit filed on behalf of the parties. A balance has to be drawn between relevant factors as there is no straitjacket mechanism for fixing the quantum of maintenance and inter alia includes the status of the parties, reasonable needs of the wife and dependent children, whether the applicant is educated and professionally qualified, whether the applicant has any independent source of income, whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home, whether the applicant was employed prior to her marriage, whether she was working during the subsistence of the marriage, whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing and looking after adult members of the family. Reliance may also be placed upon *Rajnesh v. Neha*, 2020 SCC OnLine SC 903.”*

(emphasis added)

14. In the aforesaid facts and circumstances, the Court is not inclined to interfere in the impugned order which is well considered and does not find it improper, illegal or disproportionate.

15. Accordingly, the petition is dismissed.

ANISH DAYAL, J

DECEMBER 5, 2024/kp

[Click here to check corrigendum, if any](#)