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

\+ CRL.REV.P.(MAT.) 69/2024 & CRL. MAs 31792-95

VIKRAMJEET SINGH .....Petitioner

Through: Ms. Malvika Rajkotia, Ms. Aashna Talwar and Ms. Purva Dua, Advocates.

versus

POOJA DAHIYA ....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

O R D E R

% 23.10.2024

1. By way of present petition, the petitioner/revisionist seeks to assail the order dated 08.04.2024 passed by learned Family Court, Dwarka Courts, Delhi in CC No.5005778/2029 vide which the respondent was granted interim maintenance of Rs.1,40,000/- a month towards her and the minor child and additionally, a sum of Rs.17,00,000/- for the purchase of a new car within two months of passing the said order.

2. Learned counsel for the petitioner submits that though the petitioner/husband is employed in USA and is earning 14,716 USD as per his income affidavit placed on record, his expenses are also in USD, amounting to 14,277 USD including paying for house mortgage as well as payment of Rs.20,000/- per month to his mother. Reliance has been placed on the decision in Ms. Bindu Chaudhary Vs Shri Deepak Suga, **MAT.APP.(F.C.) 63/2015** to contend that the cost of living has to be considered as per the standards of the country in which the husband is

employed while determining maintenance.

It is further submitted that admittedly, there are two joint properties in Mumbai in the name of the parties, namely *Tulipia Building* and *Jupiter Evershines*, the EMIs for which, amounting to Rs.1,75,874/- per month are also being borne by the petitioner. Furthermore, it is contended that the said flat in *Tulipia Building* is in possession of the respondent, however, the same is kept vacant deliberately by the respondent who is foregoing a rent of around Rs.75,000/- to create artificial scarcity in order to exhort money from the petitioner. It is also submitted that the respondent herself is well qualified and capable of being gainfully employed, however, chooses to not work. Reliance has been placed on her income affidavit, as per which she is living in her parental home and thus, not paying rent, and moreover, receiving rent to the tune of Rs.30,000/- from an apartment in Dwarka. It is also submitted that a perusal of her bank statements on record would indicate that the respondent spends luxuriously. Lastly, it is submitted that the interim maintenance awarded by the learned Family Court is excessive and has failed to take into account that the petitioner has already paid the respondent Rs.16,00,000/- after their separation for her and their child, and a total of over Rs.78,00,000/- since March 2015 till now.

3. I have gone through the impugned order as well as the materials placed on record.

4. It is noted that as per the respondent's Affidavit of Assets and Liabilities dated 28.09.2021, she alongwith her minor son are residing at her parental flat in Delhi. She has been incurring monthly expenditure of around Rs.70,000/- to Rs.80,000/- on herself, and her child's yearly expenses amount to Rs.8,35,000/-. Furthermore, the respondent is not gainfully

employed, however, has a rental income to the tune of Rs.30,000/- and an FDR of Rs.15,000/-. On the other hand, as per the petitioner's Affidavit of Assets and Liabilities dated 05.07.2021, he is earning around 14716 UDS/Rs.10,70,000/- per month. Further, the petitioner's expenses are around 10,366 UDS/Rs.7,60,000/- per month. Moreover, no maintenance is separately paid by the petitioner towards their minor son, who is in the custody of the respondent and looked after by her from the maintenance provided to her by the petitioner.

5. Admittedly, the respondent is highly qualified, having done her Bachelor in Information System (Hons.) and her Masters in Computer Application (MCA), however, there is nothing on record to show that she has been gainfully employed after marriage. In Shalija v. Khobbana, reported as **(2018) 12 SCC 199**, 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.

6. A perusal of the impugned order would show that the learned Family Court has assessed the yearly taxable income of the petitioner as Rs.94,63,669.5/- out of which total tax payable amounts to Rs.30,04,264/-. Further, when accounting for the cost of living in Chicago in the year 2021 as per the cost index, the petitioner's savings/balance comes out to the tune of Rs.3,17,554/- per month. It is also noted that the physical possession of one of the two joint properties is with the respondent, however, the same has not been let out on rent and as per the assessment of the learned Family Court, the minimum monthly rent expected from the said property is

approximately Rs.35,000/-.

7. Accordingly, the learned Family Court, vide the impugned order, has divided the petitioner's income into portions and granted interim maintenance of Rs.1,40,000/- per month to the respondent for herself and the minor child. The decision passed by the learned Family Court is in line with the decision of a Coordinate Bench of this Court in Annurita Vohra v. Sandeep Vohra reported as **110 (2004) DLT 456**. Considering the fact that the maintenance petition is still pending consideration before the learned Family Court and further considering the aforenoted facts and circumstances, this Court finds no ground to interfere with the impugned order.

8. The petition is accordingly disposed of alongwith pending applications.

9. Needless to state, in case at the time of disposal of the maintenance petition, the Family Court comes to the conclusion that the respondent is entitled to lesser or higher maintenance, in light of the evidence to be led in trial, the Family Court would be at liberty to grant adjustments either way.

MANOJ KUMAR OHRI, J

OCTOBER 23, 2024/*rd*