



2025:DHC:504



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 29.01.2025*+ **CRL.REV.P. 211/2024 & CRL.M.A. 4871/2024**

ABHINAV KUMAR

.....Petitioner

Through: Mr. Sharad Malhotra, Adv.

versus

SWATI & ANR.

.....Respondents

Through: Mr. Pradeep Kumar and Mr.
Love Munday, Advs.**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J**

1. The instant revision petition under Section 19(4) of the Family Courts Act, 1984 read with Section 397/401 of the Code of Criminal Procedure, 1973 [hereafter 'Cr.P.C.'] has been filed on behalf of the petitioner seeking setting aside of the order dated 11.12.2023 [hereafter '*impugned order*'] passed by the learned Judge, Family Court-01, District Shahdara, Karkardooma Courts, Delhi [hereafter '*Family Court*'] whereby the petitioner herein has been directed to pay maintenance at the rate of of Rs.14,500/- per month to respondent no. 1 and Rs.10,000/- to respondent no. 2, i.e. a total sum of Rs.24,500/- per month.



2025:DHC:504



2. The marriage between petitioner and respondent no. 1 was solemnized on 29.04.2018 as per Hindu rites and ceremonies. Out of their wedlock, respondent no. 2 was born on 18.02.2019. It is the case of respondent no. 1 that soon after the marriage, the petitioner and his parents had started demanding dowry and harassing her. On 10.09.2022, the respondent no. 1 along with her son/respondent no. 2 had left the matrimonial home. In November, 2022, the respondent no. 1 had filed a petition under Section 125 of Cr.P.C. seeking grant of maintenance. The impugned order was passed on the application seeking interim maintenance.

3. The learned counsel appearing on behalf of the petitioner submits that the affidavits of assets and liabilities were filed by the parties, and thereafter *vide* impugned order dated 11.12.2023, the learned Family Court had allowed the respondent no. 1's application for grant of interim maintenance without application of mind. It is argued that the learned Family Court did not appreciate that the petitioner is a salaried person, whose salary in hand is only Rs.55,571/-, and the Court failed to take note of the fact that he was paying an EMI of home loan amounting to Rs.21,315/- per month. The learned counsel argues that the learned Family Court, without appreciating the record pertaining to the home loan, had passed the impugned order. It is further argued that the petitioner was not allowed to lead evidence to prove the genuineness of the submissions made by him. It is contended that the learned Family Court did not



2025:DHC:504



appreciate that the respondent no. 1 was guilty of deserting him and having left the matrimonial home out of her own free will, and therefore, was not entitled to grant of interim maintenance. The learned counsel draws this Court's attention to Annexure P-8, which shows that monthly instalment of Rs.10,115/- and Rs.11,200/- being deducted from the bank account of the petitioner. It is therefore prayed that the impugned order be set aside.

4. The learned counsel appearing for the respondents, on the other hand, contends that the impugned order is an order granting interim maintenance only, which was passed on the basis of the documents placed on record, after assessing the income of the petitioner herein. It is stated that the petitioner is a man of means and is working as Senior Engineer (Production) with Hindustan Syringes & Medical Devices Ltd., Haryana and is getting a salary of more than Rs. 60,000/- per month apart from income from his agricultural land. It is also stated that the petitioner has no liability, whereas the respondent no. 1 requires maintenance for herself and her minor son i.e. respondent no. 2. Therefore, it is prayed that the present petition be dismissed.

5. This Court has **heard** arguments addressed on behalf of both the parties and has perused the material placed on record.

6. The impugned order dated 11.12.2023, passed by the learned Family Court, is set out below:



“4. I have heard the arguments and perused the record. Admittedly, the petitioner no. 1 is wife of the respondent, whereas petitioner no. 2 is his son and this relationship is not disputed. Petitioner no. 1 has alleged that she was treated with cruelty and harassment by the respondent and his family members for dowry demands of Rs. 10 Lacs and now residing separately in pursuance of those cruelty and harassments. On the other hand, respondent has countered these allegations by pleading that she left her matrimonial home without any reason. However, all such allegations / counter allegations are matter of trial and no conclusive opinion may be given regarding these allegations at this stage.

5. Petitioner no. 1 has alleged that she is not earning but maintaining her son, whereas the respondent has alleged that she is earning by coaching @ Rs. 40,000/- pm, but the respondent has not led any document to this effect. On the other hand, respondent is working with Hindustan Syringes & Medical Devices Ltd. and drawing a net salary @ Rs.55,571/- in the month of October, 2023. Respondent also has additional income @ Rs. 30,000/- per annum i.e. Rs.2,500/- per month from other sources disclosed in his affidavit of income and assets, whereas he has not filed documents regarding payment of his EMI of home loan, due to it may not be considered as deductions. Even otherwise, it is not clear whether it was availed for the benefit of petitioners or not. As such, income of the respondent is considered @ Rs. 58,000/- per month (Salary and other sources). He has no other liability except the petitioners, due to this monthly income is to be divided into 4 shares and petitioners shall be entitled for 2 shares. However, petitioner no. 2 is not of such age to claim similar maintenance as of the petitioner no. 1. Accordingly, petitioner no. 1 shall be entitled for maintenance @ Rs.14,500/- per month, whereas the petitioner no. 2 shall be entitled for maintenance @ Rs. 10,000/- pm.

6. Respondent is directed to pay monthly maintenance @ Rs. 24,500/- per month to both petitioners from the date of this



2025:DHC:504



application and during pendency of this case, which shall be payable on 10th of each succeeding calendar month during pendency of this case.

7. Ad-interim, if any already paid shall be subject to adjustment in future. Any other maintenance, if any already allowed or paid in any other proceeding shall also be set off/adjusted. Arrears be paid within 30 days positively.”

7. Having heard arguments and perused the case file, this Court is of the opinion that the primary concern of the petitioner is that he was not allowed to lead evidence regarding the contentions raised by him i.e. he was paying monthly EMIs of the home loans availed by him. However, the impugned order itself shows that the learned Family Court has mentioned that he had not filed the documents pertaining to the EMIs of home loan. However, the learned Family Court notes in the same order that even if that be so, the petitioner is working with Hindustan Syringes & Medical Devices Ltd., Haryana and drawing a net salary @ Rs. 55,571/- per month. Further, the petitioner also has additional income @ Rs. 30,000/- per annum i.e. Rs. 2,500/- per month from other sources, as disclosed by the petitioner himself in his affidavit of income and assets. Therefore, the monthly income of the petitioner could be assessed at Rs.58,000/- (approximately). The learned Family Court also observed that the petitioner had not filed any documents regarding payment of his EMI of home loan and even otherwise, it was not clear whether it was availed for the benefit of respondents herein or not. Therefore, it is apparent that this contention of the petitioner was considered by the learned Family



Court, and a finding was returned that from the record, it was not clear that whether the home loan was availed for the benefit of the respondents herein.

8. Furthermore, there is no dispute on the fact that there are some mandatory deductions which an employee is required to make and there can be some voluntary deductions which an employee may choose to make. However, while ascertaining the amount of maintenance, the Courts are required to take into account only the mandatory deductions and compulsory contributions. In case of *Chanchal Verma v. Anurag Verma*: 2022 SCC OnLine Del 2993, this Bench had observed as under:

"32. It has been held categorically in the case of *Nitin Sharma v. Sunita Sharma*, 2021 SCC OnLine Del 694, that only statutory mandatory deductions from the income of the husband are permissible to be deducted for the purpose of computation of his income for the purpose of grant of maintenance. The observations of the Court read as follows:

"...24. In the opinion of this Court, while calculating the quantum of maintenance, the income has to be ascertained keeping in mind that the deductions only towards income tax and compulsory contributions like GPF, EPF etc. are permitted and no deductions towards house rent, electric charges, repayment of loan, LIC payments etc. are permitted..."

33. The court further reiterated what was held by the Hon'ble Punjab & Haryana High Court in the case of *Seema v. Gourav Juneja*, 2018 SCC OnLine P&H 3045 which is stated as under:

"13. In a nutshell, a husband cannot be allowed to shirk his responsibility of paying maintenance to his wife, minor child, and parents by availing loans and paying EMIs thereon, which would lead to a reduction of his carry home



salary..."

34. Similarly in *Dr. Kulbhushan Kunwar v. Raj Kumari*, (1970) 3 SCC 129, the Hon'ble Supreme Court while deciding the fixation of rate of maintenance, had made the following observations:

"...19. It was further argued before us that the High Court went wrong in allowing maintenance at 25% of the income of the appellant as found by the Income Tax Department in assessment proceedings under the Income Tax Act. It was contended that not only should a deduction be made of income-tax but also of house rent, electricity charges, the expenses for maintaining a car and the contribution out of salary to the provident fund of the appellant. In our view some of these deductions are not allowed for the purpose of assessment of "free income" as envisaged by the Judicial Committee. Income Tax would certainly be deductible and so would contributions to the provident fund which have to be made compulsorily. No deduction is permissible for payment of house rent or electricity charges. The expenses for maintaining the car for the purpose of appellant's practice as a physician would be deductible only so far as allowed by the income-tax authorities i.e. in case the authorities found that it was necessary for the appellant to maintain a car..."

9. Thus, in this Court's opinion, at this stage, the petitioner cannot claim any benefit on the ground that he has to pay EMI of home loan every month and therefore the said amounts be deducted from his income and his income be assessed accordingly for the purpose of deciding interim maintenance. As far as quantum of interim maintenance is concerned, this Court finds no infirmity with the impugned order inasmuch as it divides the income of petitioner i.e. Rs.58,000/- into four equal shares, and awards one share i.e. Rs.14,500/- in favour of respondent no. 1, and Rs.10,000/- in favour



2025:DHC:504



of respondent no. 2 i.e. minor son of the parties considering that he is not of such age to claim similar maintenance as that of respondent no. 1.

10. It is also a settled law, that at the stage of deciding application seeking interim maintenance, the pleadings are to be taken into consideration, and some amount of guess-work or rough estimation has to take place, so as to make a prima facie assessment of the amount to be awarded. The Hon'ble Supreme Court in **Rajnesh v. Neha**: (2021) 2 SCC 324 had held as under:

"63. At present, the issue of interim maintenance is decided on the basis of pleadings, where some amount of guess- work or rough estimation takes place, so as to make a prima facie assessment of the amount to be awarded. It is often seen that both parties submit scanty material, do not disclose the correct details, and suppress vital information, which makes it difficult for the Family Courts to make an objective assessment for grant of interim maintenance. While there is a tendency on the part of the wife to exaggerate her needs, there is a corresponding tendency by the husband to conceal his actual income. It has therefore become necessary to lay down a procedure to streamline the proceedings, since a dependant wife, who has no other source of income, has to take recourse to borrowings from her parents / relatives during the interregnum to sustain herself and the minor children, till she begins receiving interim maintenance.

77. The objective of granting interim / permanent alimony is to ensure that the dependant spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded."

11. As far as the contention of the learned counsel for the



2025:DHC:504



petitioner that he was not given opportunity to lead evidence to prove his case is concerned, it is not be noted that the impugned order is only an interim order, and the same does not decide the entire petition, but only an application for grant of interim maintenance, wherein only a *prima facie* view of the matter is to be taken. It is only during the further proceedings, that the parties are allowed to lead evidence and the case is finally adjudicated on the basis of evidence led before the learned Family Court. During the course of arguments, this Court was also informed by both the parties that the case is listed for pronouncement of final judgment on the main petition at the end of this month, and the petitioner herein has already been granted the opportunity to lead evidence.

12. In view of the foregoing discussion, no ground for interference with the impugned order is made out.

13. Accordingly, the present petition stands dismissed.

14. It is, however, clarified that nothing expressed herein above shall tantamount to an expression of opinion on merits of the case.

15. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 29, 2025/zp