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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 444/2025)
VEER SINGH THROUGH POWER OF
ATTORNEYPetitioner

Through: Mr. Manish Jha, Sr. Adv. with Mr.
Nikhil Kohli, Ms. Ritika Gambhir
Kohli, Ms. Akshaya Ganpath and Ms.
Saumya Tiwari and Mr. Bhavay,
Advs.

versus

KINRI DHIR AND ANOTHER & ANR.Respondents
Through: Ms. Shivani Luthra Lohiya, Ms.
Pranya Madan and Mr. Jasmeet S.
Chadha, Advs.

CORAM:
HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **10.03.2025**

CM APPL. 13368/2025 (exemption)

Allowed, subject to all just exceptions.

The application stands disposed of.

CM(M) 444/2025 & CM APPL. 14101/2025 (seeking permissions to place on record addl. doc.), CM APPL. 13367/2025 (stay)

1. The present petition under Article 227 of the Constitution of India seeks to quash and dismiss the maintenance petition filed by respondent no.1 under Section 144 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 pending before the learned Family Court, South-East District, Saket Courts.
2. The learned counsel for petitioner submits that respondent no.1 is already receiving a substantial amount of Rs.4.5 lakhs every month from petitioner for herself and for respondent no.2 under the Domestic Violence



Act.

3. It is argued that petition under Section 144 of Bharatiya Nagarik Suraksha Sanhita is maintainable only in such cases where the petitioner is a destitute and is unable to maintain herself, whereas in the present case, respondent no.1 is already getting substantial amount as interim maintenance under the DV Act proceedings and, therefore, filing of a fresh maintenance petition under Section 144 of the BNSS seeking identical reliefs as granted under the DV Act proceedings is nothing short of an abuse of legal process and an attempt at unjust enrichment by seeking multiple maintenance award from different courts.

4. It is further submitted that petitioner has filed his reply raising preliminary objections to the maintainability of Section 144 BNSS Petition but instead of deciding the maintainability, the learned Family Court has directed both parties to file their respective income affidavits.

5. It is submitted that filing of income affidavits is laid down in *Rajnish v. Neha* is intended only for cases where the petition is maintainable.

6. The learned counsel for petitioner places reliance on the decision of this Court in CRL. M.C. 4717/2017 dated 01.12.2017 passed in the context of Section 125 Cr.P.C., wherein this Court took the view that maintainability of the petition under Section 125 Cr.P.C. and question of award of interim maintenance are inseparable and in order to award interim maintenance, the court concerned shall first arrive at a finding that whether the husband neglected or refused to give maintenance to his wife and that whether the wife was unable to maintain herself.

7. The learned counsel for petitioner further relies upon the judgment of the Supreme Court in the case of *Arun Kumar Vs. Union of India* (2007) 1



SCC 732 to argue that the court must first determine the jurisdictional facts before proceedings to the adjudicatory facts. It is argued that the objections raised by the petitioner is a jurisdictional fact which needs to be decided before adjudicating the claim of maintenance.

8. Per contra, the learned counsel for respondents submits that petitioner is attempting to avoid the filing of the income affidavits by hook or crook to circumvent his legal obligations against the respondents who are entitled to be maintained in the same status as they were accustomed prior to being ousted from the shared household.

9. It is also argued that the proceedings under Section 144 BNSS are distinct and independent from the proceedings under the DV Act and therefore petition under Section 144 BNSS is maintainable.

10. Petitioner has already taken objection regarding the maintainability in his reply filed before the Trial Court. His only grievance before this Court is that he may not be compelled to file the income affidavit, till such time the question of maintainability is decided by the Trial Court. During arguments, the learned counsel made a request that Trial Court be directed to decide the questions of maintainability without first insisting on the filing of income affidavit.

11. Since objection to the maintainability has already been raised by the petitioner in his reply filed to the petition under Section 144 BNSS, in view of the request made, I deem it appropriate to direct the learned Trial Court to decide the said objection expeditiously.

12. As per the judgment of the Hon'ble Supreme Court in the case of Rajnesh v. Neha & Anr. (2021) 2 SCC 324, both parties are required to file their respective affidavits of disclosure of assets and liabilities in order to



enable the Court to wake an objective assessment of the quantum of interim maintenance. Rather such affidavits should be filed within a period of four weeks. The filing of such affidavit is therefore a mandatory requirement.

13. The petitioner is therefore directed to file such affidavit as directed by the Trial Court. However, he is granted liberty to file the same in a sealed cover, so that in case the objection regards the maintainability is decided against the petitioner, the said affidavit may assist the trial court in determining the grant of interim maintenance, if any.

14. Petition is disposed of in terms of the above orders.

RAVINDER DUDEJA, J

MARCH 10, 2025/sky