



2025:DHC:3798-DB



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

Date of decision: 14.05.2025

+ **MAT.APP.(F.C.) 180/2025**

MAHENDER SINGH DHAKADAppellant

Through: **Mr. P.C. Jha and Mr. Sushil
Kumar Singh, Advs. with
appellant in-person.**

versus

SMT. SHRUTI RATHORERespondent

Through: ***Nemo.***

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE RENU BHATNAGAR

RENU BHATNAGAR, J. (ORAL)

CM APPL. 29111/2025 (Exemption)

1. Allowed, subject to all just exceptions.

CM APPL. 29112/2025

2. This is an application seeking exemption from filing all the documents pertaining to the pending cases in the Courts below. .

3. For the reasons stated in the application, the same is allowed.

MAT.APP.(F.C.) 180/2025 & CM APPL. 29110/2025

4. The present appeal is filed by the appellant husband under Section 19(1) of the Hindu Marriage Act, 1955 (hereinafter "HMA"), challenging the order dated 28.03.2025 (hereinafter referred as 'Impugned Order') passed by the learned Additional Principal Judge, Family Court, South West, Dwarka Court, New Delhi (hereinafter



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“Family Court”), in HMA No.1874/2017 titled as ***Mahender Singh Dhakad vs. Shruti Rathore***, whereby the application filed by the respondent wife under Section 24 of the HMA, in the petition for divorce filed by the appellant, was allowed by the learned Family Court granting the interim maintenance of Rs. 5,000/- per month from 19.03.2019 and Rs. 10,000/- per month from July, 2024.

5. The factual background of the present appeal lies within a narrow compass. Admittedly, the marriage of the appellant was solemnised with the respondent on 15.12.2009 as per Hindu rites and ceremonies. It is stated that after the marriage, the respondent remained with the petitioner for a short stint and left with her paramour whereafter remaining untraceable for several years.

6. Later on, the respondent appeared and both the parties engaged in rounds of litigation, which were eventually withdrawn by both the sides. Thereafter, the appellant filed the above-captioned divorce petition in which the present application under Section 24 of the HMA was filed by the respondent.

7. The main thrust of arguments of the learned counsel for the appellant is that the appellant is under heavy burden to pay maintenance to his live-in partner-Rajwanti Devi and her three children, at the rate of Rs. 62,000/- per month pursuant to a mediation settlement in the case filed by Rajwanti Devi. It is further stated that the respondent is well capable of maintaining herself as she was working prior to her marriage. It is stated that the quantum of maintenance granted to the respondent as per the impugned order, is excessive in nature and the same is liable to be set aside.



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8. We have heard the contentions of the learned counsel for the appellant and have perused the impugned order and the material on record.

9. Admittedly, the respondent is the legally wedded wife of the appellant. The appellant cannot evade his liability to maintain his legally wedded wife on the pretext that he is already paying Rs. 62,000/- per month to his live-in partner and her children.

10. As reflected in the order of the learned Family Court, neither before the Family Court nor even before this Court, any material is placed on record by the appellant to substantiate his claim that the respondent is gainfully employed. It is well-settled that the capability to earn and actual earnings are distinct considerations, and in absence of any cogent evidence establishing the respondent's present employment or income, no adverse inference can be drawn against her on the mere ground of her alleged employability. Reference can be drawn to the observations of the Hon'ble Supreme Court in the case of *Shailja v. Khobbanna* (2018) 12 SCC 199 wherein it was held that the factum of the wife being capable of earning a living and whether she is actually earning are two different aspects. Merely because the wife is capable of earning is not sufficient reason to reduce the maintenance awarded by the learned Family Court.

11. The appellant is employed as an Assistant Professor in Delhi University and is earning handsomely. Before the learned Family Court, the appellant had contended to be earning Rs. 75,000/- per month, whereas in his income affidavit filed in July, 2024, he stated his income to be Rs. 1,30,000/- per month approximately.



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Interestingly, on one hand, the appellant has shown, his monthly income as Rs. 1,30,000/- per month, while on the other hand, he has shown his monthly expenditure as Rs. 1,75,000/-.

12. The learned Family Court has rightly observed that the appellant is paying a sum of Rs. 62,000/- per month to his live-in partner and three children from the said relationship, pursuant to a settlement. However, such an arrangement cannot absolve the appellant of his statutory obligation to maintain his legally wedded wife.

13. Keeping in view the expenditure of the appellant, his EMI payments towards home loan, and all other expenses, the learned Family Court had granted the maintenance of Rs. 5,000/- per month to the respondent wife from 19.03.2019 till June, 2024, and thereafter, at the rate of Rs. 10,000/- per month. In light of the rising price index, the cost of living and the income of the appellant, the maintenance awarded by the learned Family Court cannot be termed as excessive or unreasonable, as claimed by the appellant.

14. We find no illegality in the impugned order passed by the learned Family Court. The appeal is, accordingly, dismissed.

NAVIN CHAWLA, J

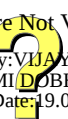
RENU BHATNAGAR, J

MAY 14, 2025

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Signature Not Verified

Signed By: VIJAYA LAKSHMI DOBHAL
Signing Date: 19.05.2025
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