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

+ CRL.REV.P. 210/2018, CRL.M.A. 4612/2018

RUKSHAR HUSSAIN

.....Petitioner

Through: Mr. Vijay Kinger, Ms. Roopa Nagpal
and Mr. Hemant Kumar, Advocates.

versus

STATE & ANR

.....Respondents

Through: Mr. Hemant Mehla, APP for State.
R-2 in person.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **13.10.2025**

1. The present revision petition under Sections 397 and 401 of the Code of Criminal Procedure, 1973¹ is directed against order dated 17th February, 2018, passed by the Additional Sessions Judge in CA No. 182/2017, titled ***“Rukshar Hussain v. State & Another”***. By the said order, the Sessions Court dismissed the appeal filed by the Petitioner (husband) against order dated 7th October, 2017 passed by the Trial Court, awarding monthly interim maintenance of ₹12,000/- to Respondent No. 2 (wife) and their 2 minor children.

2. The Petitioner married Respondent No. 2 on 11th November, 2017 as per Muslim rights and ceremonies at Delhi. From the said marriage, two children were born, who are presently in the custody of Respondent No. 2. Following marital discord, the parties have been living separately.

3. Respondent No. 2 filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005.² During the pendency of the

¹ “Cr.P.C.”

² “DV Act”



complaint, she filed an application claiming interim maintenance for herself and her minor children. This application was decided by the Trial Court by order dated 7th October, 2017, the relevant portion of which is extracted:

“5. Both the parties were directed to file income affidavit in terms of judgment passed by Hon'ble High Court of Delhi in *Kusum Sharma Vs. Mahinder Sharma* which has been complied. In the income affidavit, petitioner has disclosed that she is B.A. Graduate and also having Diploma in early Childhood Care and Education and respondent no.1 has disclosed that he is 10th failed and he is a helper in S.T. Metal Display at B-143, Lane No.12, Kanti Nagar, Delhi and is earning Rs.8,000/- per month. It has been further disclosed by the respondent no. 1 that petitioner is doing the work of stitching ladies suit and is earning Rs.12,000/- per month and hence she is capable to maintain herself and their children.

6. Now, coming to the facts of present case, applicant has submitted that income of respondent no.1 to be around Rs.2 lakhs per month, being businessman working at property bearing no. IX/5690, Subhash Mohalla, Old Seelampur Road, Gandhi Nagar, Delhi-31. Respondent no. 1 has disclosed that he is a helper in S.T. Metal Display at B-143, Lane No.12, Kanti Nagar, Delhi and is earning Rs.8,000/- per month.

However, during the arguments on this application, Protection Officer was directed to visit both the above-stated premises in question to verify the veracity of above-made submissions of the parties and respondent no.1 was found to be present at the address/ shop stated by the petitioner i.e. at property bearing no.IX/5690, Subhash Mohalla, Old Seelampur Road, Gandhi Nagar, Delhi-31. However, the address mentioned by the respondent no. 1/ husband was found to be a residential address.

7. All the aforesaid facts clearly shows that respondent no.1 has manipulated the facts just to devoid the petitioner of her rightful maintenance. Further nothing has come on record in support of the fact that petitioner is earning so as to maintain her as well as her two minor children. Even otherwise, it will be a very tough for a single mother to raise her children as well as to work for her livelihood and that justified her current unemployed status. Considering the report of the Protection Officer and above-stated facts and circumstances, the monthly income of respondent no.1 is assessed to be Rs. 25,000/- per month and accordingly, this court directs respondent no.1 to pay Rs.12,000/- per month as maintenance to petitioner for herself and her children i.e. Rs.4,000/- each from the date of filing of the petition till the disposal of the present case.

8. Anything received by the petitioner in the present matter qua ad-interim maintenance or in any other proceedings of the maintenance shall be adjusted in the amount awarded by this order.

9. No other relief has been pressed for at this stage. Application for interim maintenance is disposed off.



10. *Nothing stated herein shall tantamount to the merits of this case.*

Put up for PE for 14.03.18. Petitioner to file affidavit and supply advance copy of the same one week before the next date of hearing to the other party.

A copy of this order be given free of cost to the parties."

4. Dissatisfied, the Petitioner preferred an appeal against the said order, which was decided by the Appellate Court *vide* impugned order dated 17th February, 2018 to the following effect:

"This is an appeal filed by the appellant challenging impugned order dated 07.10.2017 passed by the Ld. Trial Court wherein interim maintenance was granted to the respondent no. 2 and her children. Alongwith the appeal, appellant has also filed an application for stay of the impugned order.

Vide order dated 21.12.2017 the appellant was directed to pay to the respondent no. 2 the entire arrears of maintenance till the date of filing of the appeal. Counsel for the appellant submits that the respondent no. 2 was not entitled to even grant of interim maintenance as she has a professional qualification and the grant of interim maintenance itself was bad. Reliance has been placed on the judgment of Rupali Gupta Vs. Rajat Gupta in MAT.APP (F.C.) 143/2014 decided on 05.09.2016 passed by the Hon'ble Division Bench of our own High Court.

Counsel for the respondent no. 2 on the other hand has placed reliance on the judgment of our own High Court in case Rajeev Preenja Vs. Sarika & Ors, 159(2009) Delhi Law Times 616 in support of his arguments that the appeal cannot be heard without the appellant depositing the entire arrears of interim maintenance.

At the outset it may be mentioned that maintenance of wife and children is not a charity which the husband is doing by paying maintenance to her but it is the moral as well as legal obligation cast upon the husband to maintain his wife and children. The object of passing order of grant of interim maintenance is to enable the estranged wife to survive and maintain herself during the pendency of the litigation. Hence, the appellant is bound to pay the interim maintenance granted by the Ld. Trial Court otherwise there is no purpose for grant of interim maintenance. Merely by filing an appeal or revision the husband cannot defer or delay the payment of maintenance to his estranged wife and children. It goes without saying that the payment of interim maintenance is always adjustable in the final order in case there is reduction in the quantum of maintenance. Merely possessing profession degree by the wife does not mean that she is employed or is earning. L.d. Trial Court in the impugned order has specifically taken note of the fact that the respondent no. 2 was unemployed. The judgment relied



upon by the counsel for the appellant is distinguishable on facts as the wife herein was not only possessing the degree of CA but was also in profession for last many years and therefore the aforesaid judgment is of no avail to the counsel for the appellant.

The appellant has declined to pay the arrears of maintenance despite specific order passed by this court, hence, I am of the considered opinion that the appeal filed by the appellant cannot be heard till he pays the entire arrears of interim maintenance from the date of Award of Interim Maintenance till the filing of appeal. The courts cannot show any indulgence to a litigant, who point blank refuses to comply with the orders of the court. Hence, in these circumstances, the application for stay of the impugned order and the appeal filed by the appellant u/s 29 of PWDV Act stand dismissed. Copy of the order be given Dasti to the parties. TCR be sent back forthwith alongwith copy of this order.

Appeal file be consigned to Record Room after due compliance.”

5. Aggrieved by the aforesaid orders, the Petitioner has filed the present petition seeking their setting aside. Mr. Vijay Kinger, counsel for the Petitioner, contends that both the Courts below have erred in awarding maintenance to Respondent No. 2. He submits that the Trial Court failed to properly consider the income affidavit filed by the Petitioner, and did not correctly assess his financial capacity. The Trial Court further failed to consider that Respondent No. 2 is well-qualified, capable of earning, and ought to have taken steps to contribute towards the upkeep of the family, rather than solely relying on the grant of maintenance. It is further submitted that the Appellate Court did not afford a fair opportunity to the parties to be heard on the merits of the case, and proceeded to dispose of the appeal in a cursory manner.

6. He further submits that the Petitioner has divorced Respondent No. 2 and has since remarried. He is now responsible for maintaining a family of five members, including his present spouse and two minor children, from the second marriage. It is contended that his monthly income is only ₹15,500/-, and that he is not in a position to sustain the maintenance amount awarded.



7. Additionally, it is pointed out that, by order dated 12th March, 2018, this Court granted a stay on the execution proceedings, subject to the Petitioner making certain deposits. In compliance with the interim directions of this Court, the Petitioner has been making monthly payments of ₹8,000/- to Respondent No. 2 from April 2025 onwards.

8. Respondent No. 2, who is present in person, submits that she has no independent source of income apart from the maintenance awarded by the Court. It is pointed out that both children are minors, aged 17 and 13 years respectively, and that their educational expenses impose a significant financial burden on her and her family members. She states that she has been the sole caregiver for the children and that the Petitioner has not contributed towards their upbringing. She further submits that she is financially dependent on her father and other family members for sustenance, and that the maintenance amount of ₹12,000/- per month for three persons is barely sufficient to meet the basic needs of herself and the children. She further alleges that the Petitioner is concealing his actual income and misrepresenting his financial condition.

9. The Court has considered the submissions advanced by the parties and carefully perused the impugned orders. The Trial Court adopted a reasoned and balanced approach in determining interim maintenance, having regard to the income affidavits filed by the parties and after conducting appropriate verification. A perusal of the Trial Court's order dated 7th December, 2017 reveals that the Petitioner claimed to be employed as a helper at ST Metal Display, situated at B-143, Lane No.12, Kanti Nagar, Delhi, earning a monthly income of ₹8,000/-. In contrast, Respondent No. 2 alleged that the Petitioner was engaged in business and earning approximately ₹2,00,000/-



per month, operating from premises located at IX/5690, Subhash Mohalla, Old Seelampur Road, Gandhi Nagar, Delhi-31.

10. Pursuant to directions issued by the Trial Court, the Protection Officer conducted an inquiry and visited both the premises. The Officer found the Petitioner present at the address disclosed by Respondent No. 2, whereas the address provided by the Petitioner was found to be residential in nature. On the basis of this verification, the Trial Court concluded that the Petitioner had sought to misrepresent material facts in an attempt to evade his maintenance obligations.

11. In such circumstances, the approach adopted by the Trial Court, in granting interim maintenance of ₹12,000/-, accords with established legal principles governing determination of interim maintenance. Where income is not fully disclosed or documentary proof is incomplete, courts are not expected to adopt a purely arithmetical method but may apply reasonable inference based on the overall standard of living, lifestyle, and surrounding circumstances of the parties.³ The underlying rationale is that where direct proof of income is unavailable, judicial estimation becomes necessary. Accordingly, based on the material on record and the financial positions of the parties, the Trial Court rightly awarded interim maintenance of ₹4,000/- each to Respondent No. 2 and her two minor children. In fact, in the considered opinion of this Court, the total amount of ₹12,000/- awarded for three individuals is minimal and barely sufficient to ensure basic sustenance.

12. Further, the contention that Respondent No. 2 is well-qualified and capable of employment, and therefore disentitled to maintenance, does not merit acceptance at the interim stage. The judicial precedents hold that an



able-bodied husband cannot evade his statutory duty to maintain his wife and child by merely asserting her employability or his own limited means.⁴ The obligation of the husband is not contingent on the wife's employment status, but on whether she has sufficient independent income to maintain herself and the child in a manner commensurate with their status. This position was duly acknowledged by the Appellate Court in the impugned order. Taking note of the Petitioner's failure to comply with the directions for payment of interim maintenance, the Appellate Court rightly observed that the mere filing of an appeal or revision petition does not, in itself, operate as a stay or justify the deferment of maintenance payable to the wife and children. Consequently, the Appellate Court correctly dismissed the appeal, in view of the Petitioner's continued non-payment of arrears.

13. Viewed thus, the impugned orders disclose no perversity or infirmity warranting interference under the limited revisional jurisdiction of this Court. It bears emphasizing that an order of interim maintenance is a provisional measure designed to safeguard basic sustenance during the pendency of proceedings. It neither determines the parties' ultimate rights nor precludes a fresh evaluation upon full evidence at the final stage.

14. In light of the foregoing, the petition stands dismissed.

SANJEEV NARULA, J

OCTOBER 13, 2025/nk

³ *Bharat Hegde v. Saroj Hegde* 2007 SCC OnLine 622; *Rajnesh v. Neha and Anr.* (2012) 2 SCC 324.

⁴ *Shamima Farooqui v. Shahid Khan* (2015) 5 SCC 705; *Anju Garg v. Deepak Kumar Garg* 2022 SCC OnLine SC 1314.