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

+ CRL.REV.P.(MAT.) 10/2025, CRL.M.As. 735-737/2025

ADIL

.....Petitioner

Through: Ms. Niharika Ahluwalia, Mr. Mihir
Gupta, Advocates

versus

NAZIA BEGUM & ORS.

.....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **14.01.2025**

1. The present petition has been filed under Section 438 read with Section 442 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (erstwhile Sections 397 and 401, respectively of the Code of Criminal Procedure, 1973) assails order dated 24th July, 2024 passed by the Family Court, Central, Tis Hazari Courts in Maintenance Case No. 274/2018.¹
2. Through the impugned order, the Petitioner was directed to pay the monthly maintenance amounting to INR 6,000/- per month to his three children, Respondents No. 2 to 4 herein, from 1st August, 2018 till each of them attain the age of majority.
3. The impugned order has been passed by the Family Court assuming the wages of the Petitioner as INR 18,000/- per month according to the minimum wages for unskilled labour prescribed under the Minimum Wages

¹ titled *Nazia Begum & Ors. v. Adil*



Act, 1948 and notifications issued thereunder, applicable to Delhi.

4. Counsel for the Petitioner argues that the assumption drawn by the Family Court under the Minimum Wages Act, 1948 is improper and erroneous in the present case. The Petitioner, in fact, has no source of income and would, therefore, not in a position to pay the maintenance amount. It is further argued that Respondent No. 1 has failed to prove the income of the Petitioner and this material fact has also has not been taken into consideration. Additionally, the Family Court failed to take note of the settlement agreement dated 15th November, 2013 executed between the parties to record the terms of their divorce. As per the said Agreement, it was acknowledged that the Petitioner has paid a sum of INR 27 Lakhs to Respondent No. 1 and in turn, Respondent No. 1 had agreed not to initiate any further proceedings against the Petitioner. This term of the Agreement was not adhered to and frivolous complaint has been filed against the Petitioner, in order to force him to pay further maintenance.

5. The Court has considered the afore-noted contentions but remains unpersuaded. The Trial Court, after meticulously examining the record and taking into account the submissions of the parties, concluded as follows:

“10. Having heard the submissions and perused the record, it is the view of this court that petitioner no.1 is entitled to no maintenance for several reasons. Firstly, respondent has placed on record photocopy of respondent’s undertaking on a stamp paper of Rs.20/- and therein it is purportedly reflected that she had taken Rs. 27 lacs from respondent towards resolution of all her disputes with the respondent, albeit in several tranches. It bears the signatures of petitioner no.1 and that of her father. There is also an assurance on this stamp paper that she had taken this amount from the respondent for herself and also for her children towards full and final payment of all the claims and would not file and police complaint or any court case against him. Petitioner no.1 had orally stated to the court on 05.06.2023 that her signatures and that of her father had been taken ‘fraudulently’ on



the said stamp paper. Thus, it is to be noted that it is not her averment that the said signatures are not hers and or that of her father or that the said signatures had been forged and fabricated. She states that her signatures and that of her father had been taken 'fraudulently' on the said stamp paper. Under what circumstances her signatures and that of her father were taken 'fraudulently' is not spelt out anywhere. In this connection, she filed no police complaint or any court case. Secondly, it does not appear from a reading of income affidavit o petitioner no.1 that she is making earnings out of some avocation, however she is not furnishing complete details in respect thereof. It is pertinent to mention here that in her income affidavit dt. 18.01.2024 she states that he is bearing all her household expenses by doing 'homemade work' and by taking help from relatives. Thus, grant of interim maintenance to petitioner no.1 is declined.

11. This leaves us with the three children, namely, Haris (DOB: 24.03.2007) and twins Madiya and Muniza (DOB: 05.09.2009). It is the duty and responsibility of both the parents to maintain the children. Respondent avers that he is presently unemployed and is dependent on others for his survival; that he was operated upon in his left thigh and right side stomach and is now unable to work. He thus averts that he is in no position to maintain his children. It is difficult for me to accept this averment of respondent. It does not appear to me, given the circumstances of this case, that he is hand to mouth and has nothing at all to support himself. As per his own averment in year 2013 he had paid about Rs.27 lacs to petitioner no.1. It is doubtful that he would be having no savings. In any case, respondent being father of the children cannot leave the children without any financial support.

12. It has already been stated hereinabove that it is duty of both the parents to maintain the children. Even if he may not be working presently, he would have to maintain the children. It will be assumed that he earns the minimum wages of an unskilled labour as prevailing in Delhi which is presently about Rs.18,000/- per month.

13. Given the above, it is hereby directed that the respondent shall pay Rs.2000/- per month to each of his three children till each of them turn major. This amount shall be payable from the date of filing of the petition (01.08.2018) till further orders.

14. This disposes of the interim maintenance application.

15. Petitioners may file their replication on or before the next date of hearing with advance copy thereof to the opposite side.

16. Put up on 17.12.2024 for further proceedings as per law."

6. It is pertinent to highlight that the Family Court has awarded only a sum of INR 6,000/- per month as maintenance for Respondents No. 2, 3, and



4, collectively, to be paid until they attain majority. This amount, in the opinion of this Court, barely meets the minimum standard of subsistence and reflects the Family Court's restrained approach in assessing the Petitioner's financial capacity. The award assumes the Petitioner's income to be INR 18,000/- per month, an estimation that the Family Court arrived at after careful consideration of the available evidence. It is well-settled that in matrimonial disputes, where parties do not disclose their true incomes, the Court is permitted to make guess work while estimating the income of the non-applicant.²

7. Additionally, in *Shamima Farooqui v. Shahid Khan*,³ the Supreme Court has observed that a healthy, able-bodied husband is legally obligated to provide maintenance to his wife. The Court further emphasized that this principle gets heightened when the children are with the wife. In the present case, the Petitioner has not shown as to why he is unable to pay INR 6,000/- per month as maintenance to his minor children. Thus, considering the amount of maintenance, the reasoned basis for the assumption of Petitioner's income and his ability to provide maintenance, this Court finds no justification to interfere with the impugned order.

8. Furthermore, the Petitioner has contended that an amount of INR 27 lakhs was paid to Respondent No. 1. However, upon a specific query from this Court regarding the source of such funds or any evidence to substantiate the alleged payment, the Petitioner has failed to produce any documentary proof. This includes the absence of records indicating cash withdrawals amounting to alleged payment of INR 27 lakhs or any evidence of payment

² *Bharat Hegde v. Saroj Hegde*, 2007 SCC OnLine Del 622

³ (2015) 5 SCC 705



made through other financial instruments or modes.

9. Moreover, the Agreement placed on record also does not demonstrate that an amount of INR 27 lakhs was paid under the said Agreement.

10. In view of the foregoing, the Court finds no infirmity of the order passed by the Family Court and is not inclined to entertain the present petition.

11. Accordingly, the present petition, along with pending applications, is dismissed.

SANJEEV NARULA, J

JANUARY 14, 2025/ab