



2025:DHC:2432



\$~

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

% *Judgment delivered on: 08.04.2025*

+ **CRL.REV.P. 636/2024 & CRL.M.A. 14643/2024**

JITENDER @ CHINKUPetitioner

Through: Mr. Akhilesh Dixit, Advocate
for the petitioner along with
petitioner-in-person.

versus

BABLI @ MANVI & ANR.Respondents

Through: None.

CORAM:

HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

DR. SWARANA KANTA SHARMA, J

1. The petitioner-husband has assailed the order dated 21.03.2024, passed by the learned Judge, Family Court-02, Shahdara District, Karkardooma Courts, Delhi [hereafter '*Family Court*'] wherein interim maintenance to the tune of ₹8,000/- per month has been granted to the wife (respondent no. 1) and ₹7,000/- per month to the minor child (respondent no. 2).

2. Succinctly, the facts of the case, as borne out of the records, are that the marriage between the petitioner and the respondent no. 1 was solemnized on 03.12.2007 at Chuna Bhatti, Dharamshala, Bhajan Pura, Delhi, as per Hindu rites and ceremonies. Out of the



2025:DHC:2432



said wedlock, a son was born on 05.09.2009, who is presently in the custody of the respondent. It is the case of respondent no. 1 that she was harassed in her matrimonial home for the demand of dowry and was even beaten by her husband and in-laws on several occasions. The respondent no. 1 was allegedly thrown out of her matrimonial home on 13.03.2015, and thereafter, she had filed a petition under Section 125 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'], i.e. MT No. 81/2015, seeking grant of maintenance, and had also filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 [hereafter '*PWDV Act*'], i.e. D.V. 77/2015. Further, an FIR bearing no. 1362/15 was also registered at Police Station (P.S.) New Usmanpur, Delhi against the petitioner and his family members for offence under Sections 498A/406/34 of Indian Penal Code, 1860 [hereafter '*IPC*'] and Section 4 of the Dowry Prohibition Act, 1961.

3. By way of order dated 07.09.2015, passed in MT No. 81/2015, an amount of ₹2000/- per month was fixed as ad-hoc interim maintenance, payable by the petitioner towards the respondent no. 1. In the said order, the statement of petitioner herein was recorded, wherein he had stated that he had studied till class 8th, and was earning ₹5,500/- per month, and was willing to pay ₹2,000/- per month to the respondents herein.

4. Later, a compromise was reached between the parties in the said case before the Counseling Cell, and an '*MOU/Settlement*' dated 02.06.2017 was executed, following which mediation was closed



2025:DHC:2432



between the parties, on the petitioner herein agreeing to pay at least ₹10,000/- per month towards household expenses and ₹2000/- to the minor child as pocket money, and the parties residing together in the matrimonial home. Thereafter, the respondent no. 1 had withdrawn the petitions filed by her under Section 125 of Cr.P.C. and Section 12 of PWDV Act. However, the petitioner and his family members had again allegedly started harassing the respondent and thereafter, a compromise was arrived at between the parties, in the FIR bearing no. 1362/15, P.S. New Usmanpur, Delhi, before the Mediation Centre, Karkardooma Court, Delhi. By way of order dated 16.07.2019, it was agreed between the parties that they shall continue to reside together, and the petitioner shall deposit a sum of ₹12,000/- in the bank account of respondent no. 1 towards the household expenses.

5. It was the case of respondent no. 1 that the petitioner had eventually stopped paying the aforesaid amount to her, and had started harassing and humiliating her. Accordingly, the respondent no. 1 was constrained to file a fresh petition under Section 125 of Cr.P.C., i.e. MT No. 206/2020, before the learned Family Court, thereby praying for grant of maintenance to the tune of ₹10,000/- each for her and her child.

6. By way of order dated 27.02.2023, the learned Family Court was pleased to direct payment of ₹12,000/- as ad-interim maintenance to the respondents by the petitioner. Eventually, *vide* the impugned order dated 21.03.2024, passed in MT No. 206/2020, the



2025:DHC:2432



learned Family Court was pleased to award interim maintenance of ₹15,000/- per month in favour of respondents – ₹8,000/- per month to the wife (respondent no. 1) and ₹7,000/- per month to the minor child (respondent no. 2).

7. The learned counsel for the petitioner, assailing the impugned order dated 21.03.2024, argued that the learned Family Court has failed to consider material evidence placed on record, including photographs indicating that respondent no. 1 is running a beauty parlour and is earning a substantial income. It was contended that the learned Family Court has erroneously interpreted the petitioner's bank transactions by treating credited amounts as his income, without appreciating that these amounts were, in fact, transferred by the petitioner's brother around the dates when he was required to pay ₹12,000/- (comprising ₹10,000/- for household expenses and ₹2,000/- towards maintenance) to respondent no. 1. It was further argued that the learned Family Court has misdirected itself in assuming that the petitioner was willingly paying ₹5,040/- as LIC premium for his son while being reluctant to pay maintenance to respondent no. 1, overlooking the fact that the said LIC policy names the petitioner himself as the nominee and was not indicative of any preferential financial treatment. The learned counsel pointed out that respondent no. 1, in her petition, admitted that the petitioner was earning ₹15,000/- per month. Despite this, the Family Court assumed his income to be ₹25,000/- per month without any supporting documentary evidence. Additionally, respondent no. 1 failed to



2025:DHC:2432



produce any proof to substantiate her claim that the petitioner was earning ₹50,000/- per month. It was also contended that the petitioner's registration with the Delhi Building and Other Construction Workers' Welfare Board was mischaracterized as an attempt to avoid maintenance obligations, whereas the registration was only to avail benefits legitimately extended under the Board's welfare schemes. Finally, it is contended that the amount awarded as interim maintenance – ₹8,000/- per month to respondent no. 1 and ₹7,000/- per month to the minor child – based on speculative assessments of income, is disproportionately high and places an excessive financial burden on the petitioner. It was submitted that the petitioner is not in a financial position to comply with the impugned order, and therefore, it is prayed that the said order be set aside.

8. No one had appeared on behalf of the respondent for the last four dates, and accordingly, on 03.04.2025, arguments were heard on behalf of the petitioner and judgment was reserved. However, the reply filed on behalf of the respondents in on record, in which it has been submitted that the petitioner had failed to comply with the orders directing him to pay maintenance, and had also breached the conditions of the MOU signed on 02.06.2017 and the settlement order dated 16.07.2019. It is submitted that despite the settlement, the petitioner and his family continued to harass and humiliate the respondent, and as a result, he had stopped paying the agreed maintenance amount. It is also stated that the respondent no. 1 has no source of income and is solely responsible for raising and bearing the



expenses of her minor child. It is also submitted that the petitioner pays an LIC premium, but the details of the same are not known to the respondent. Further, the petitioner's bank statements contradict his claims regarding his salary, reflecting transactions between ₹20,000–25,000/-, as also noted in the impugned order dated 21.03.2024. It is also submitted that presently, the arrears of maintenance amounting to ₹7,80,000/- have been accumulated. It is thus prayed that the present petition be dismissed.

9. This Court has **heard** arguments addressed by the learned counsel, and has pursued the material available on record.

10. As the issue before this Court pertains to the quantum of interim maintenance fixed by the learned Family Court, it shall be apposite to first take note of the law on point. In *Rajnesh v. Neha & Anr.*: (2021) 2 SCC 324, the Hon'ble Supreme Court has categorically laid down the parameters to be followed by all courts deciding such applications for grant of maintenance/interim maintenance. The said decision emphasizes that orders of maintenance, even interim in nature, must be based on a fair and realistic assessment of income and expenditure, duly supported by the income affidavits submitted by the parties, and not on assumptions or vague indicators. Some of the relevant observations of the Hon'ble Supreme Court are extracted hereunder:

“65. The party claiming maintenance either as a spouse, or as a partner in a civil union, live-in relationship, common law marriage, should be required to file a concise application for interim maintenance with limited pleadings, alongwith an



Affidavit of Disclosure of Assets and Liabilities before the concerned court, as a mandatory requirement. On the basis of the pleadings filed by both parties and the Affidavits of Disclosure, the Court would be in a position to make an objective assessment of the approximate amount to be awarded towards maintenance at the interim stage.

* * *

78. The factors which would weigh with the Court inter alia are the status of the parties; reasonable needs of the wife and dependant children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife.

* * *

80. On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependant family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The Court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living.

81.The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.”

11. Now it shall be relevant to take note of the observations of the learned Family Court, in respect of the assessment of income of the



2025:DHC:2432



petitioner and the quantum of maintenance awarded to the respondents. The said observations, as contained in paragraph 5 to 7 of the impugned order, are set out below:

“5. Order for Rs.12000/- as ad interim were made but respondent is making payment of around Rs.3000/-pm. It is interesting to note that payment has been started to be made to the petitioner recently only when the matter has come at the stage of arguments on interim application. Further perusal of the payment receipts filed on record would show that sometime an amount of Rs.700/- and sometimes payment of Rs.900/- is made. Payment has been started from November 2023 only. It is quite surprising that he is making payment of Rs.5000/-for LIC premium of his son and is not making Rs.5000/-pm maintenance to the wife.

6. As far as proof regarding registration of respondent as plumber is concerned, one identity card has been filed from Delhi Building Construction Worker Welfare Board. Perusal of this document shows that registration has been made on 27.02.2024. It appears that registration has been done recently in order to avoid making payment of maintenance to the wife.

7. It is mentioned in the income affidavit of respondent that he is residing on rent and he is making payment of Rs.3300/- pm and he works as plumber. It is quite surprising to note that respondent is earning Rs.250/-per day and making payment of Rs.5000/- for LIC premium of his son in which he himself is nominee. Further perusal of bank account of respondent would show that on 29.05.2020 there is debit in his account towards debit card fees, hence, he is maintaining debit card also. Further there are credits in his bank account of Rs.12000/-in January 2020 and another Rs.12000/- in February 2020. Similarly, there are other credits in his account in December 2019, November 2019 and October 2019 besides other credit in the account. Perusal of these documents would show his status. Respondent must be earning Rs 20,000/- to Rs.25,000/- pm, if not more. In the circumstances, he is directed to make payment of Rs.8000/-pm for the petitioner/wife and Rs 7000/-pm for the child from the date of filing present petition.”

12. In the present case, the Affidavit of Income and Assets



2025:DHC:2432



submitted by the petitioner reflected that he was residing in a rented accommodation, and working as a baildar/daily wage earner, and that he had studied till 8th standard. The impugned order further records that he was paying ₹3,300/- towards the rent. The learned Family Court, while considering various indicators including credit entries in the petitioner's bank account, LIC premium payments, and possession of a debit card, has assessed the petitioner's monthly income to be between ₹20,000/- to ₹25,000/-.

13. Having carefully perused the reasons and findings recorded in the impugned order, this Court is of the view that there are certain glaring inconsistencies and errors in the approach adopted by the learned Family Court.

14. Insofar as the presumed income of the petitioner and the quantum of maintenance determined by the learned Family Court is concerned, even if this presumed income bracket is taken at its midpoint, i.e., ₹22,000/- per month as notional income of the petitioner, the financial obligation imposed upon him *vide* the impugned order appears disproportionate and leaves him with a negligible subsistence amount. After deducting ₹3,300/- towards house rent and ₹15,000/- towards interim maintenance (₹8,000/- for respondent no. 1 and ₹7,000/- for respondent no. 2), the petitioner would be left with a mere ₹3,700/- for his own personal expenses including food, clothing, transportation, utilities, and any other incidental costs for the entire month.



2025:DHC:2432



15. Thus, a *prima facie* imbalance is evident in basic arithmetic of the order, since such an allocation leaves little or no room for basic sustenance of the petitioner and cannot be said to satisfy the test of ‘reasonableness’, which must govern the fixation of quantum of interim maintenance. While the purpose of interim maintenance is to ensure that the wife and child are not left destitute during pendency of proceedings, it cannot be stretched to a point where it renders the paying spouse destitute or financially crippled. The assessment of income for interim maintenance must be balanced, keeping in mind not only the needs of the claimants but also the financial capacity and subsistence requirements of the payer.

16. This Court is also of the view that the observation of the learned Family Court – that the petitioner is paying ₹5,000/- per month towards the LIC premium for his son while refusing to pay ₹5,000/- per month as maintenance to his wife – is premised on an erroneous understanding of the financial record. In this regard, it shall be apposite to note that the LIC premium of ₹5,000/- is an annual payment and not a recurring monthly liability. Therefore, it cannot be treated as a regular financial burden or indicative of the petitioner’s sustained financial capacity. Drawing a comparison between an annual expenditure and the recurring obligation of monthly maintenance is not correct and cannot form a basis for assessing the petitioner’s willingness or ability to pay maintenance to the wife.

17. Similarly, the learned Family Court has also observed that it was “quite surprising” that the petitioner had claimed that he was



2025:DHC:2432



earning ₹250/- per day and yet was making a payment of ₹5,000/- towards the LIC premium for his son. However, this observation also appears to be erroneous and arithmetically flawed. An earning of ₹250/- per day would roughly translate to an annual income of around ₹90,000/-, while the LIC premium in question is also an annual payment of ₹5,000/-. When seen in that context, the petitioner's ability to make a one-time annual payment of ₹5,000/- from an annual income of ₹90,000/- does not, in itself, reflect any financial inconsistency or concealment by the petitioner herein.

18. The learned Family Court has further observed that a debit entry dated 29.05.2020 towards debit card fees indicates that the petitioner is maintaining a debit card, thereby implying a certain level of financial capacity of the petitioner. This observation, however, does not find favour with this Court. In today's context, possession of a debit card or maintaining a bank account is a common feature, even among individuals with modest or irregular incomes, particularly in view of the nationwide financial inclusion initiatives of the Government. The mere existence of a debit card cannot, by itself, be construed as indicative of substantial or stable income of the petitioner.

19. The learned Family Court, in the present case, also appears to have presumed the petitioner's monthly income on the basis of certain credits of ₹12,000/- each reflected in his bank account in January and February 2020. However, even if these entries were to be considered for drawing a *prima facie* inference of income, they could



2025:DHC:2432



not justify the presumption that the petitioner was earning ₹20,000-25,000/- per month.

20. Moreover, the learned Family Court also failed to adequately consider the petitioner's submission that he resides in a rented accommodation and pays monthly rent towards the same. Notably, there is no finding to the effect that this claim was false, or that the petitioner was residing in his own property or otherwise avoiding rent.

21. Also, the petitioner's case before the learned Family Court, at the time of filing his income affidavit, was that he had studied only till class 8th, was a daily wage earner and working as a *baildar*. Later, he had produced one identity card showing that he was registered with the Delhi Building and Other Construction Workers' Welfare Board, and another identity card issued by Building Workers' Union showing that he was working as a plumber. However, it is apparent that these documents were not appreciated by the learned Family Court on the ground that these identity cards had been issued recently and that the petitioner wanted to avoid payment of maintenance.

22. Be that as it may, even if the learned Family Court was not inclined to take note of the facts that the petitioner had studied only till class 8th, was working as a daily wage earner/*baildar* at the time of filing of income affidavit, and working as a plumber at the time when the impugned order was being passed – in such a scenario, it



2025:DHC:2432



could have considered the prevailing rates of minimum wages as notified by the Government of NCT of Delhi, under the provisions of Minimum Wages Act, 1948. In this Court's considered opinion, in cases where determining the actual income of a spouse is fraught with difficulty due to the absence of reliable documentary evidence or formal employment records, the Court may take judicial notice of the prevailing rates of minimum wages as notified by the concerned Government. This approach is especially relevant in matters concerning interim maintenance, where a *prima facie* estimation of income is necessary to balance the competing financial needs of the parties, and to ensure fairness and avoid arbitrary or conjectural assessments. This approach is also beneficial in a case where a husband takes a plea that he does not earn anything, but as per the catena of judgments of Hon'ble Supreme Court, an able-bodied man cannot absorb himself of his duty to maintain his wife and children by taking such a plea.

23. Thus, in the present case, the learned Family Court, while assessing the income of the petitioner, could have referred to the applicable minimum wage rates in Delhi. As per the minimum wage rates notified by the Delhi Government, for the relevant period, the approximate monthly wages are as follows: ₹18,000/- for unskilled workers, ₹19,000/- for semi-skilled workers, and ₹20,000/- for skilled workers.

24. Before proceeding further, it shall be relevant to note that in the case of *Annurita Vohra v. Sandeep Vohra: 2004 SCC OnLine*



Del 192, this Court has held that family income should be divided equally between the petitioner(s) and the respondent, but one extra portion/share should go to the respondent as an earning spouse because extra expenses would necessarily occur to the earning hand.

25. Even assessing the income of petitioner as ₹20,000/- per month, on the basis of minimum wages for a skilled worker, and thereafter applying the formula as explained in the decision of *Annurita Vohra v. Sandeep Vohra (supra)*, the income of ₹20,000/- would be divided into four shares, and while two shares would go to the petitioner, the other two shares would be divided among the respondent no. 1 and 2 each. This would mean that the petitioner retains ₹10,000/- for his own expenses, and respondent no. 1 (wife) and respondent no. 2 (child) would each be entitled to ₹5,000/- per month as their share towards maintenance.

26. While it is true that the determination of interim maintenance is to be made on a *prima facie* assessment, while considering the income affidavits filed by the parties, and some guess work is also permissible as per law, such assessment must also include a *prima facie* consideration of the arguments of the petitioner (husband) and the material presented by him. However, it is evident that the impugned order has been passed on the basis of conjectures and surmises, without a cogent assessment of the petitioner's actual earning capacity supported by the material on record.

27. At the time of granting interim maintenance, the learned



2025:DHC:2432



Family Courts must keep in mind that the amount fixed should be reasonable for both parties to be able to sustain themselves. While the objective is to provide financial support to the wife (or dependent party), it is equally important that the husband is not burdened beyond his financial capacity. The maintenance amount should be such that the husband is also left with sufficient means to maintain himself. A fair balance must be struck between the needs of one and the paying capacity of another.

28. Thus, in this Court's opinion, the impugned order cannot be sustained, as the learned Family Court has assessed the petitioner's income and determined the quantum of interim maintenance on erroneous parameters, and the said assessment appears to have been made on conjectures and assumptions rather than a proper appreciation of the record and the applicable legal principles.

29. In view of the foregoing, the income of the petitioner, for the purpose of deciding interim maintenance payable to the respondents, is assessed at ₹20,000/- per month. Accordingly, the respondent no. 1 shall be entitled to interim maintenance of ₹6,000/- per month and respondent no. 2/minor child shall be entitled to interim maintenance of ₹4,000/- per month, from the date of filing of application.

30. The petitioner is directed to clear the arrears of maintenance within three months from date.

31. The respondent(s) shall be at liberty to take recourse to law, in case the petitioner fails to clear the arrears of maintenance.



2025:DHC:2432



32. The petition is disposed of in above terms, alongwith pending application.
33. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

APRIL 8, 2025/ns

(corrected and uploaded on 06.05.2025)