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

% *Date of Decision: 29<sup>th</sup> April, 2026*

+ CRL.REV.P.(MAT.) 180/2026&CRL.M.A. 10263/2026

HARSHITA GUPTA .....Petitioner

Through: Ms. Ruchi Munjal, Advocate.

versus

NIMIT GANDHI .....Respondent

Through: Mr. Rakesh Khanna, Sr. Advocate  
with Mr. Aseem, Ms. Seema Seth, Ms.  
Muskaan Deswal, Ms. Kashish Jain,  
Mr. Sourav Kumar, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ JAIN**

**J U D G M E N T (oral)**

1. The point raised in the present petition is very short and precise.
2. Petitioner had filed a complaint under Section 12 of *Protection of Women from Domestic Violence Act* (PWDV Act) and, *inter alia*, prayed for maintenance and alternate accommodation or rent @Rs.75,000/- per month.
3. On 25.08.2023, her application under Section 23 of PWDV Act was disposed of.
4. No relief was granted to her as learned Magisterial Court came to the opinion that it was not a case where complainant was unable to maintain herself and that she had capacity to work and maintain herself.
5. The wife i.e. petitioner herein had also prayed for alternate accommodation of same level and fact remains that no such relief has been granted to her as per the abovesaid order dated 25.08.2023.
6. Feeling aggrieved, the petitioner filed an appeal before the learned First Appellate Court which was registered as CRL.A. No. 382/2023.
7. Fact, however, remains that petitioner also knocked the doors of the



learned Family Court by filing a petition under Section 125 Cr.P.C and learned Judge, Family Court directed maintenance @ Rs. 25,000/- per month *vide* order dated 31.05.2025. Feeling aggrieved by the abovesaid order, both the sides i.e. husband and the wife have filed separate Revision Petitions which are pending adjudication before this Court and certain directions in the abovesaid matters have also been given on 19.12.2025.

8. The abovesaid appeal came up for further consideration before the learned First Appellate Court on 31.01.2026 and it has adjourned the proceedings of the abovesaid appeal till the aforesaid Revision Petitions are disposed of by this Court.

9. Such order dated 31.01.2026 is under challenge.

10. Needless to emphasize, any such wife can seek maintenance by taking recourse to various statutory provisions, including by filing a petition under Section 125 Cr.P.C and by filing appropriate complaint under the provisions of *Protection of Women from Domestic Violence Act* (PWDV). Though, at times, the facts might be somewhat overlapping, merely because a petition under Section 125 Cr.P.C. is pending before a superior Court i.e. before the Family Court Judge, it would not by itself, mean that the Magisterial Court cannot or pass any directions. Any such approach would render the provision of PWDV Act redundant. Reference be made to *Rajnish v. Neha: (2021) 2 SCC 324* whereby it is held that there is no bar to seek maintenance under different statutes. Paragraphs 60-61 of the abovesaid judgment read as under:-

*“60. It is well settled that a wife can make a claim for maintenance under different statutes. For instance, there is no bar to seek maintenance both under the D.V. Act and Section 125 of the Code of Criminal Procedure, or under H.M.A. It would, however, be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding. If maintenance is awarded to the wife in a previously instituted proceeding, she is under a legal obligation to disclose the same in a*



*subsequent proceeding for maintenance, which may be filed under another enactment. While deciding the quantum of maintenance in the subsequent proceeding, the civil court/family court shall take into account the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant.*

*61. To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, we direct that in a subsequent maintenance proceeding, the Applicant shall disclose the previous maintenance proceeding, and the orders passed therein, so that the Court would take into consideration the maintenance already awarded in the previous proceeding, and grant an adjustment or set-off of the said amount. If the order passed in the previous proceeding requires any modification or variation, the party would be required to move the concerned court in the previous proceeding.”*

11. Mr. Khanna, learned Senior counsel for respondent submits that there is no merit in the appeal as in view of the observations made in *Kuldeep Kaur vs. Swaran Kaur through LRs: 2025 SCC OnLine Del 5593*, the wife is not, even otherwise, entitled to any such right of residence. He submits that since there is already a decree of divorce, the wife is not entitled to seek any maintenance or alternate accommodation.

12. While refuting the abovesaid contention, learned counsel for petitioner submits that the decree of the divorce is already under challenge.

13. Fact, however, remains that it is entirely up to the learned First Appellate Court to consider the facts and the legal proposition and then to answer the same in accordance with law. This Court, at the moment, is only required to see whether the Court should have kept the appeal in *abeyance* or should have decided the same.

14. Keeping in mind the overall facts of the case, the present petition is disposed of with the direction to learned First Appellate Court to decide the abovesaid appeal, irrespective of the pendency of the abovesaid two Revision Petitions pending before this Court.

15. Needless to say, it would give due opportunity of hearing to both the sides and then dispose of the abovesaid appeal in accordance with law.



16. It is, however, clarified that this Court has not given any observation with respect to the merits of the abovesaid appeal and the learned Trial Court would not feel prejudiced, either way by any of the observation appearing hereinabove.

**(MANOJ JAIN)**  
**JUDGE**

**APRIL 29, 2026/sw/sa**