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

Date of decision: 25.04.2025

+ MAT.APP.(F.C.) 154/2025

SH. RAHUL KHANDOOJA

.....Appellant

Through: Mr. Shubham Pandey, Mr.
Kailash Chand Samaniya and
Mr. Chirag Chaturvedi, Advs.

versus

KIRAN KHANDOOJA

.....Respondent

Through: *Nemo.*

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE RENU BHATNAGAR

RENU BHATNAGAR, J. (ORAL)

CM APPL. 24222/2025 (Exemption)

1. Allowed, subject to all just exceptions.

CM APPL. 24224/2025

2. For the reasons stated in the application, the delay of four days in filing the appeal is condoned.

3. The application stands disposed of.

MAT.APP.(F.C.) 154/2025 AND CM APPL. 24223/2025

4. The instant appeal under Section 19 (1) of the Family Courts Act, 1984 has been filed by the appellant, challenging the Order dated 12.02.2025 passed by the learned Judge, Family Court-01, North East, Karkardooma Courts, Delhi (hereinafter referred to as, 'Family Court') in HMA No. 645/2023 titled *Kiran Khandooja v. Rahul Khandooja*, disposing of the application filed by the respondent-wife under Section 24 of the Hindu Marriage Act, 1955 (hereinafter



referred to as ‘HMA Act’) in the following terms:

“27. In terms of the ‘Annurita Vohra vs. Sandeep Vohra’, reported as, ‘2004 (3) AD252, the income of the respondent is to be divided into three units. The respondent would be entitled to two units for himself and petitioner would be entitled to 1 unit. The share of the petitioner would come to Rs. 15,000/- per month. Petitioner is already earning Rs. 10,000/- per month. In order to give same status, petitioner is granted a sum of Rs.5,000/- per month from the date of filing of the application under Section 24 HMA till the disposal of the present petition.”

5. Admittedly, the marriage between the appellant and the respondent was solemnised on 23.08.2020 according to Hindu rites and ceremonies. No child was born out of the said wedlock. Due to several differences, both parties started residing separately since 18.10.2020. The respondent herein has filed the aforementioned divorce petition under Section 13 (i-a) and (i-b) of the HMA, being HMA No. 645/2023, along with the application under Section 24 of the HMA. The same has been decided by the learned Family Court by way of the Impugned Order.

6. The learned counsel for the appellant contends that the respondent-wife has wrongly put forth her income by stating that she works as an accountant in a private firm, claiming to earn only a sum of Rs. 10,000/- per month, which is below the minimum wage for a skilled worker as per the Minimum Wages Act, 1948. He further contends that the respondent did not produce a valid salary slip and had only produced a salary certificate dated 19.04.2024 on the letterhead of her employer, that is, Swastik Motors. The said salary



certificate employs vague and defensive language and thus, the same has been wrongly relied upon by the learned Family Court. He also states that the respondent is well-educated, highly skilled, and is earning a sufficient income to support herself, as reflected by regular monthly credits into her bank account through multiple transactions, which clearly indicate that she has a substantial and stable source of income, contrary to her claim of earning a minimal income.

7. The learned counsel for the appellant further submits that the Income Tax Returns (ITRs) of the appellant clearly establish that his average monthly income is Rs. 30,000/-, however, the learned Family Court has arbitrarily assessed his income as Rs. 45,000/- per month without any basis. In addition thereto, the appellant bears the responsibility of not only maintaining himself but also his aged parents, his widow sister and her children. It is, therefore, the submission of the learned counsel for the appellant that all these aspects were overlooked by the learned Family Court, and thus, the impugned order is liable to be set aside.

8. We have considered the submissions of the learned counsel for the appellant and have perused the records.

9. The capability of a wife to earn does not render her ineligible to claim maintenance. Even if she is earning an income, it cannot operate as a bar to awarding maintenance, as the said amount must be sufficient to enable her to maintain herself. In the case of **Rajnesh v. Neha**, 2020 SCC OnLine SC 903, the Apex Court reiterated this principle as under:

“90. The courts have held that if the wife is



earning, it cannot operate as a bar from being awarded maintenance by the husband. The courts have provided guidance on this issue in the following judgments:

90.1. In Shailja v. Khobbanna, (2018) 12 SCC 199, this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home. Sustenance does not mean, and cannot be allowed to mean mere survival”

10. Similarly, this Court in ***Binita Dass v. Uttam Kumar***, 2019:DHC:3942, held that the qualification of the wife and her capacity to earn cannot be the sole ground to deny her interim maintenance if she is without any source of income. In the said case, the petitioner/wife, *inter alia*, had approached this Court challenging the order of the Trial Court as well as the Appellate Court, whereby her application for grant of interim maintenance had been dismissed. With regard to the observations made by the Trial Court and the Appellate Court, this Court observed as under:

“4. Clearly both the Trial Court as well as the Appellate Court have erred in not appreciating the judgments of this Court wherein it has specifically been held that capacity to earn and actually earning are two different things. Reference may be had to the decisions of this court in Kanupriya Sharma vs. State & Anr, Crl.Rev.P.849/2018 decided on 31st May, 2019 and Babita Bisht vs. Dharmender Singh Bisht, Crl.Rev.P.456/2015 decided on 29th May, 2019.

5. This court in Kanupriya Sharma (Supra) relied upon judgment of the Supreme Court of



India in Bhuwan Mohan Singh v. Meena, (2015) 6 SCC 353 and held as under:

"22. The Supreme Court of India in *Bhuwan Mohan Singh v. Meena*, (2015) 6 SCC 353 has held that Section 125 of the Code of Criminal Procedure was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created where under she is compelled to resign to her fate and think of life "dust unto dust". It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able-bodied. There is no escape route unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds.

23. The rationale for grant of maintenance under section 125 Cr.P.C. as expounded by the Supreme Court in *Bhuwan Mohan Singh* (supra) applies on all fours to the grant of maintenance under the DV Act."



6. *It is not the case of the respondent, that petitioner is actually employed or earning. The only ground taken is that she is qualified and capable of earning. The Supreme Court in Shailja & Anr. Vs. Khobbanna (2018) 12 SCC 199 has held that whether the wife is capable of earning or whether she is actually earning are two different requirements.*

7. *Qualification of the wife and the capacity to earn cannot be a ground to deny interim maintenance to a wife who is dependant and does not have any source of income.””*

11. In the present case, the respondent has claimed to be earning an income of approximately Rs. 10,000/- per month, which is alleged to be received by her in cash. The learned Family Court has taken into consideration the income of the respondent as disclosed by her, including the statements of accounts of the respondent maintained at two banks.

12. As far as the submission of the appellant that the learned Family Court has wrongly relied upon the salary certificate dated 19.04.2024 is concerned, we find that the salary certificate produced by the respondent before the learned Family Court cannot be disregarded on a mere assumption that the same is vague and defensive in nature, or that her income is below the minimum wage prescribed for a skilled worker under the Minimum Wages Act, 1948. The fact remains that the appellant failed to produce any documents or evidence to challenge the authenticity of the said salary certificate except his bald submissions.

13. Furthermore, insofar as the income of the appellant is concerned, the learned Family Court has assessed the income of the appellant as Rs. 45,000/- per month, after taking into account the ITRs



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of the appellant as filed by him before it for the Assessment Years 2021-22, 2022-23 and 2023-24. In these ITRs, his total income has been shown as Rs. 4,42,150/-, Rs. 4,77,270/- and Rs. 3,28,820/- respectively, which translates to a monthly income of Rs. 36,845/-, Rs. 39,772/- and Rs. 27,401/-, respectively, for the concerned Assessment Years.

14. In addition to the ITRs, the appellant had also filed profit and loss account statements for the year ending 31.03.2022, showing his sales to be in the sum of Rs. 7,31,900/-, Rs. 14,43,978/- for the year ending 31.03.2023, and Rs. 14,51,690/- for the year ending 31.03.2024.

15. Though, before the learned Family Court, the respondent had claimed that the appellant was earning a sum of Rs. 1,80,000/- per month, being a Charter Accountant and owning three offices, along with an additional income accruing from interest and the sale and purchase of shares, amounting to Rs. 60,000/-, which comes to a total of Rs. 2,40,000/- per month, but she has also not produced any document to substantiate this claim.

16. Usually, it is seen that in the matrimonial proceedings where the issue of payment of maintenance is under adjudication, one party has a tendency to conceal his income whereas the other party has a tendency to inflate the income. In such circumstances, the Court has no option but to assess the income of the respondent on the basis of various factors. This Court in *Jayant Bhargava v. Priya Bhargava*, 2011 SCC OnLine Del 1651, has observed that in the proceedings for grant of maintenance, both the parties tend not to disclose their income



truthfully. The relevant paragraph of the said Judgment reads as under:

“15. The Supreme Court of India in the case of Jasbir Kaur (Smt.) (supra), has also recognized the fact that spouses in the proceedings for maintenance do not truthfully disclose their true income and therefore some guess work on the part of the Court is permissible. Further the Supreme Court has also observed that "considering the diverse claims made by the parties one inflating the income and the other suppressing an element of conjecture and guess work does enter for arriving at the income of the husband. It cannot be done by any mathematical precision".

17. In the present case, the learned Family Court, after considering the ITRs and profit and loss account of the appellant, has rightly assessed his income at Rs. 45,000/- per month.

18. Before this Court, the appellant has claimed that, apart from himself, the appellant has the liability of maintaining his parents, and his widow sister along with her children, however, in paragraph no. 5 of his reply to the application under Section 24 of the HMA filed by the respondent before the learned Family Court, the appellant categorically mentioned that only his mother is dependent upon him. Further, before the learned Family Court, he had argued that his father was running a shop, and therefore, his mother would be dependent on his father only. The claim regarding the dependency of her widow sister along with her children was never claimed by him before the learned Family Court.

19. As observed by this Court in the case of **Bineeta Das** (supra), the wife is entitled to enjoy the same status of living as her husband.



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Considering the income of the respondent as Rs. 10,000/- per month, as compared to the income of Rs. 45,000/- of the appellant, as assessed by the learned Family Court, the grant of interim maintenance of Rs. 5,000/- per month is found to be appropriate by us, so as to give the respondent the same status as that of her husband. Even if we were to accept the plea of the appellant-husband that the respondent-wife is earning sufficiently and has a stable source of income, given the meagre amount of maintenance of Rs. 5,000/- per month that has been awarded by the learned Family Court and the income of the respondent, we do not find it exorbitant or liable to be interfered with by this Court.

20. Taking into account the social status and the lifestyle of the parties involved, the Order of maintenance of Rs. 5,000/- per month awarded to the respondent wife cannot be treated as excessive, unjust or unreasonable.

21. Accordingly, we do not find any infirmity in the Impugned Order passed by the learned Family Court granting maintenance of Rs. 5,000/- per month to the respondent.

22. Finding the appeal meritless, the same is accordingly dismissed. The pending application also stands disposed of.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

APRIL 25, 2025

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Click here to check corrigendum, if any