

**IN THE COURT OF MS TWINKLE WADHWA,
ADDITIONAL SESSIONS JUDGE-02, NORTH-EAST
KARKARDOOMA COURTS, DELHI.**

CNR No. DLNE-01-003933-2026

CA No. 02/2026

**Rafeeq Ahmad
S/o Sh. Saleem Malik
R/o D-1-226, Sangam Vihar
New Delhi**

...Appellant

Versus

**Smt. Rukhsar
W/o Sh. Rafeeq Ahmad
D/o Sh. Peer Ali
R/o A-166, Street No. 4, Nehru Vihar
North East, Delhi-110094**

...Respondent

Date of assignment	:	07.01.2026
Date of Arguments	:	20.07.2026
Date of Pronouncement	:	04.08.2026
Conclusion	:	Dismissed

JUDGMENT

1. The present appeal has been filed against the order dated 05.12.2025 passed by Ld. Trial Court whereby awarding maintenance of Rs. 10,800/- to respondent and her two children.

2. Facts of the case as are culled out from the judgment of the learned Trial Court are as follows:

“ 62. It is submitted on behalf of the petitioner that the petitioner was married to the respondent no.1/husband on 22.12.2019 according to Muslim rites and customs in Faridabad. After the marriage, the petitioner began residing with the respondent at the matrimonial home at D-1-226, Sangam Vihar, Delhi, and performed her matrimonial obligations. The complainant's parents allegedly spent a substantial amount on the marriage and provided all dowry articles and jewelry as demanded by the respondent no.1 and his family members. After the marriage, the respondent no.1, his mother and sister-in-law allegedly pressurized the complainant to bring cash and gifts from her parental home and upon her refusal, she was subjected to cruelty, physical beatings and continuous humiliation by the respondent no.1 and his family members. From the wedlock, twins Sanava and Rihaan were born on 21.09.2020 at Govt. Hospital, Khanpur, Malviya Nagar, Delhi. It is alleged that the respondent no.1/husband, often at the instigation of his mother and sister-in-law, assaulted the complainant by gagging her with a cloth and pressing her neck with an intention to cause serious harm. The respondent no.1's family allegedly pressured him to remarry and also discriminated against the complainant because she had a girl child, subjecting her to further physical abuse and neglect. The respondent no.1 and his family members allegedly abused the complainant in filthy language, repeatedly assaulted her in the same manner, demanded Rs. 1,00,000/- or Rs. 50,000/- on various occasions and neglected to provide basic household necessities with an intention to force her out of the matrimonial home. The complainant, along with her mother and relatives, made efforts to persuade respondent no.1 and his family members to mend their behaviour but the misconduct allegedly continued. The

complainant and her minor children were thrown out of the matrimonial house on 11.06.2022 and since then, she has been staying at her parental house. Thus, it is prayed that the present application be allowed and the petitioner be granted the relief of maintenance.

03. Per contra, the present application is opposed by respondent no.1/husband. It is submitted on behalf of respondent no.1 that the petition as well as the present application has been filed only to harass the respondents and to take advantage of her own wrong by the petitioner. Thus, it is prayed to dismiss the present application.

04. Heard. Record perused.

05. The factum of marriage between the parties is admitted and at this stage, this Court has to prima facie opine whether the petitioner was subjected to domestic violence by respondent at their shared household entitling her to the reliefs under the PWDV Act, 2005.

06. After perusing the contents of the petition wherein the petitioner has laid down in details regarding the atrocities committed by the respondents, prima facie it appears she was subjected to domestic violence.

07. As per the income affidavit filed by the petitioner, she has custody of her minor children and she claims that her total expenditure is to the tune of Rs. 20,000/- and that of her minor children is to the tune of Rs. 12,000/- per month. The petitioner claims to be unemployed and is residing at her parental house. The petitioner further claims that the respondent no.1 is 12th pass and is earning Rs. 30,000/- p.m. by working in SDMC parking at Nehru Place. She further claims that the respondent no.1 has no liability except to maintain the petitioner and her minor children, who are in the custody of the petitioner.

08. As per the income affidavit filed by the respondent no. 1, he claims that he was earlier working as parking attendant at Nehru Place parking however, due to construction work said parking site has been closed and ever since he is unemployed and dependent on his parents. He further claims that petitioner is 12th pass and she is earning approx. Rs. 10,000/- per month by imparting tuitions. He further claims that all the jewelry articles are in possession of petitioner.

Grounds of appeal and arguments

4. Ld. Counsel for the appellant has urged that the appellant is uneducated and resides with his parents; two of his sisters are married, and his two unmarried brothers reside separately. That the parking site where the appellant was earlier employed is presently under renovation, on account of which he has no source of income and is presently dependent upon his brother for his day-to-day expenses. The respondent/wife is 12th class pass and was working as a tutor.

5. Per contra, it is submitted on behalf of respondent/wife that the respondent is only 10th class pass, and that she is unable to take up employment as she has to care for the twin minor children, one of whom (the daughter) does not keep well. It is further submitted that her parents render her no financial support and that it is, in fact, her married brother who bears her expenses; and that she is not engaged in any employment. The matrimonial home was owned by the appellant's parents; that the appellant's father runs a shop selling

water bottles, and the appellant's brothers work as drivers, indicating that the appellant's family is not without means.

6. It is contended that the appellant was earning Rs. 30,000/- per month at the parking site, and no documentary evidence has been placed on record to substantiate the claim that the site is under renovation or that the appellant has, in fact, become unemployed. It is further submitted that the Ld. Trial Court's assessment of income on the basis of the Minimum Wages Act is a reasonable and settled method of computing notional income and cannot be termed excessive; and that despite the order dated 05.12.2025, execution proceedings remain pending and no maintenance has been paid by the appellant till date.

Findings

7. It is a settled principle that at the stage of grant of interim relief under Section 12 of the DV Act, the Court is required only to form a prima facie opinion on the basis of the averments made, and is not required to conduct a mini-trial on contested questions of fact. Whether the respondent/wife voluntarily left the matrimonial home, or whether she was constrained to do so on account of cruelty as alleged by her, is a matter that necessarily requires appreciation of evidence and falls squarely within the domain of trial.

8. This Court, therefore, finds no infirmity in the approach of the Ld. Trial Court in declining to adjudicate this disputed question at the interim stage. The plea raised by the appellant on this count does not merit interference with the impugned order.

9. It is well settled that even where a wife possesses some independent income or the capacity to earn, this by itself does not operate as an absolute bar to grant of maintenance, particularly where she has the custody and care of minor children. The Hon'ble Supreme Court has consistently held that mere educational qualification or theoretical earning capacity cannot be equated with actual sufficient income, and the touchstone remains whether the claimant is able to maintain herself and the children in a manner reasonably commensurate with the standard of living they were accustomed to.

10. In the present case, the respondent/wife has custody of twin minor children, one of whom is stated to require medical attention. Appellant's claim of her being engaged in tuitions, even if assumed to be true, would at best yield a modest supplementary income insufficient to discharge the burden of raising two minor children single-handedly. The appellant has led no cogent material, such as evidence of the alleged tuitions, their frequency, or the fees charged, to substantiate this claim beyond a bare assertion in the income affidavit.

11. Accordingly, the alleged income of the respondent/wife, even if taken at face value, does not disentitle her to maintenance, particularly having regard to her responsibilities towards the minor children.

12. The appellant does not dispute that he was, admittedly, working at the SDMC parking site at Nehru Place until some point prior to the filing of the present application. His case rests entirely on the assertion that the site has since closed on account of renovation/construction, rendering him unemployed.

13. However, as rightly contended by Ld. Counsel for the respondent, no documentary evidence whatsoever, such as any communication from the SDMC, photographs of the site, or any other contemporaneous record, has been placed on record to substantiate this claim. A bare, unsubstantiated assertion of unemployment, particularly by a person who was until recently gainfully employed and who is admittedly able-bodied, cannot be accepted as a ground to escape the statutory obligation to maintain one's wife and minor children.

14. It is a well-recognised principle that a husband who is willfully unemployed, or who fails to establish genuine incapacity to earn, cannot be permitted to defeat the legitimate claim of maintenance of his dependents. The purpose of maintenance under the DV Act is remedial and beneficial, to ensure that the aggrieved person and her children are not left

destitute and are able to sustain a dignified standard of living pending final adjudication of their rights.

15. This Court, therefore, finds no merit in the appellant's plea of unemployment, and holds that the Ld. Trial Court was correct in declining to accept it as a ground for denial of maintenance.

16. In the absence of reliable proof of the appellant's actual current income, the appellant having failed to substantiate his claim of job loss, the Ld. Trial Court adopted the well-established method of notionally computing the appellant's income with reference to the Minimum Wages Act, arriving at a figure of Rs. 18,456/- per month. This method is a recognised and reasonable fallback in maintenance proceedings where a respondent either conceals his true income or fails to substantiate a claim of unemployment/reduced income, and this Court finds no infirmity in its application here. This notional figure is considerably lower than the appellant's alleged prior earning of Rs. 30,000/- per month, and is, therefore, a conservative and not an inflated estimate.

17. On this notional income, the Ld. Trial Court has awarded Rs. 3,600/- each to the respondent/wife and the two minor children, aggregating to Rs. 10,800/- per month. This Court is of the view that the same cannot be termed excessive or unreasonable, having regard to the fact that three dependents (the wife and two minor children) are being maintained out of this

amount, the absence of any other independent source of income shown to be available to the respondent/wife sufficient to meet the needs of herself and the children; and the fact that the appellant continues to reside with his parental family and has not demonstrated any competing financial liability of a comparable nature.

18. Accordingly, this Court finds no ground to interfere with the quantum of maintenance fixed by the Ld. Trial Court.

Conclusion

19. For the foregoing reasons, this Court finds no infirmity, legal or factual, in the judgment dated 05.12.2025 passed by the Ld. Trial Court. The appellant has failed to make out any case warranting interference with the impugned order.

20. In view of the above discussion, the present appeal is hereby dismissed. The judgment dated 05.12.2025 passed by the Ld. Trial Court is upheld/affirmed.

21. A copy of this judgment be sent to the Ld. Trial Court for information and necessary compliance, along with the Trial Court record.

22. Appeal file be consigned to record room after due compliance.

**Announced in open court
today on 04.08.2026**

**(TWINKLE WADHWA)
Additional Sessions Judge-02
North-East, Karkardooma, Delhi**