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

+ **CRL.M.C. 1659/2025 & CRL.M.A. 7460/2025**

SANDEEP JAIN

.....Petitioner

Through: **Mr. Vijay Chandra Jha and Mr. Tushant, Advocates**

versus

SMT PRIYA JAIN

.....Respondent

Through: **None**

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **10.03.2025**

CRL.M.A. 7461/2025 (for exemption)

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

CRL.M.C. 1659/2025 & CRL.M.A. 7460/2025

3. The present petition has been filed under Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS) impugning the order dated 11.02.2025 passed by the Id. ASJ directing the Appellant herein to deposit at least 50% of the arrears of compensation amount awarded vide impugned order dated 20.11.2024 passed by the Trial Court.

4. Learned counsel for the Petitioner states that in view of the judgement of the Division Bench in **Sabina Sahdev & Ors. v. Vidur Sahdev¹** and more specifically, at paragraph '30' therein which reads as under: -

"30. Thus, we answer the reference by holding that the general direction

¹ SCC OnLine Del 9747.



issued in *Rajeev Preenja* (supra) in paragraphs 15, 16 and 20 are not sustainable. The said directions could not have been issued by the learned Single Judge as they seek to curtail the statutory remedy of revision available under Section 399 read with Section 401 of the Cr.P.C, and of appeal under Section 29 of the DV Act, against orders granting interim maintenance under Section 125 Cr.P.C. and Section 23 of the DV Act respectively. The direction in question over steps into the legislative field, which was impermissible for the Court to do. We agree with the view taken by the learned Single Judge in *Brijesh Kumar Gupta* (supra), that there cannot be an absolute rider that the entire maintenance amount, as granted by the Trial Court, should be deposited prior to the entertainment of the statutory remedy, because it would leave the remedy of statutory revision/ appeal illusory. Accordingly, we hold that a revision under Section 399 read with Section 401 Cr.P.C. and an appeal under Section 29 of the DV Act, against the order granting maintenance under Section 125 Cr.P.C. and under Section 23 of the DV Act respectively, would be maintainable, and would be entertained and heard without any pre-condition of deposit of the arrears of maintenance as ordered by the Ld. MM. We further hold that the pendency of such a Revision or Appeal- as the case may be, shall not operate as a stay of the operation of the order granting interim maintenance. The reference is answered accordingly. "

(Emphasis supplied)

5. Learned counsel for the Petitioner states that the Appellate Court cannot ask to make deposit of arrears of maintenance as a pre-condition for hearing of the appeal.

5.1 He, however, fairly concedes that the pendency of the appeal cannot operate as a stay on the order granting interim maintenance.

5.2 He admits that though the interim maintenance has been granted at Rs. 20,000/- per month, the Petitioner is only paying an amount of Rs. 10,000/- per month.

6. Issue notice. Upon steps being taken by the Petitioner, issue notice to the Respondent through all modes. In addition, through the counsel for the Respondent.

7. In view of the judgment of the Division Bench in **Sabina Sahdev**



(supra) the Appellate Court is directed to hear the appeal on merits and not insist on a pre-deposit.

8. It is clarified that the Respondent will be at liberty to pursue the execution of the order dated 20.11.2024 passed by the Trial Court in accordance with law, since even as per the Petitioner herein, the mere pendency of the appeal cannot operate as a stay.

9. List on **22.04.2025**.

10. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

MARCH 10, 2025/rhc/sk