

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

+ **FAO (OS) No. 119/2008**

Date of Decision : May 14, 2009

RAJINDER SINGH SALUJA Petitioner
Through: Mr. Aman Lekhi, Sr.Adv. with
Ms. Meenakshi Lekhi and
Mr. Jaspreet S. Rai, Advs. for the
Appellant.

Versus

Sarbjoyot Kaur Saluja & Ors. Respondent
Through: Ms. Geeta Luthra, Adv. with
Ms. Akanksha Munjhal, Adv. for
the Respondents.

CORAM :

**HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

SANJAY KISHAN KAUL, J. (ORAL)

**FAO (OS) No. 119/2008 & CM APPL. No. 16697/2008
(Condonation of delay in filing Cross Objections along with
Cross Objections)**

1. The dispute is an unfortunate one where the appellant/husband is arrayed on one side and the respondent/wife

on the other side whereas the two minor children arrayed as respondent Nos. 2 and 3. The appeal has been filed by the husband aggrieved by the impugned order dated 30.01.2008 determining the issue of interim maintenance and facilities to be extended to the respondents for their residence. The respondents have also filed cross objections albeit after a delay of 39 days.

2. We may note at the inception that averments made in the application seeking condonation of delay of 39 days filed by the respondents for taking on record the cross objections do not evoke the confidence of the Court. The reason given is that there was a fracture in the left ankle of respondent no. 1 which caused some delay and thereafter some time was taken to draft the cross objections. During this period of time, the respondents were already legally advised through counsel who was appearing before the learned Single Judge and in fact the case of the appellant is that the respondent No. 1 was even attending to legal proceedings and her presence was recorded in Court proceedings. Learned Senior counsel for the appellant contends that the appropriation of maintenance determined in terms of the impugned order itself shows that the respondent No. 1 accepted the order and the filing of the cross objections is clearly an afterthought. Respondents had gone as far as to even file execution proceedings and at no stage reserved their right to file cross objections.

3. We find force in the contention of the learned Senior counsel for the appellant. Despite this we have examined the rival

contentions of the parties on the plea of maintenance and the living arrangements for the respondents taking into consideration that ultimately it is a dispute between one unit of the family and the object of any order can only be to ensure that sufficient means are available for the maintenance of the wife and the children keeping in mind the financial means of the appellant.

4. It is not in dispute that the only residential property owned by the appellant is the first floor of house No. 8/15 WEA Karol Bagh, New Delhi. The appellant is running a Guest House known as Royal Palace located near Ganga Ram Hospital which is his source of income and is using a Hyundai Santro Car. The aspect of the earning capacity of the appellant has been examined by the learned Single Judge in the impugned order in Paras 4 and 5. The learned Judge has taken note of the fact that even earlier the appellant was making available funds to the respondents for their needs even though there were strained relations. The need has increased over a period of time and taking into consideration the fact that even the income tax returns do not reflect the accurate income of the person, the learned Single Judge determined a sum of Rs. 25,000/- per month as payable for the maintenance of the respondents. This amount arrived at by the learned Single Judge in his discretion after looking into the documents placed on record and hearing the parties thus, does not call for any interference.

5. We must also take note of the fact that this amount is not in isolation as the only amount being paid to the respondents. The directions passed by the learned Single Judge are as under:

“Considering the income of the defendant No. 1 during pendency of this suit, defendant No. 1 shall continue to:

- i. bear electricity charges of the house bearing number 8/15 WEA Karol Bagh, New Delhi subject to a maximum of Rs. 5,000/- per month.
- ii. He shall continue to pay the school fees/tuition fees and other expenses for the education of the two children.
- iii. He shall pay a sum of Rs. 25,000/- per month to plaintiff No. 1 on account of household expenses and other misc expenses.
- iv. He shall not dispossess plaintiffs from the first floor of House no. 8/15 WEA Karol Bagh, New Delhi.
- v. He shall purchase full medical coverage insurance policy for all the three plaintiffs and shall get the same renewed year after year during pendency of the instant suit.”

The aforesaid shows that the residence of the respondents is taken care of as also the electricity charges. Further the school fee, tuition fee and other expenses for education of children are also taken care of as also full medical coverage of the insurance policies. Learned counsel for the respondents makes a grievance that there is specialized medical treatment required for the children for which the respondent No. 1 has been expending money and that she has not received the original policy which should be available to her to facilitate any claim under the policy. We consider it appropriate to direct the appellant to hand over the original policies extending the

medical coverage to the respondents within a week from today and on renewal of said policies, to make available the original policies to the respondent No. 1. Insofar as any specialized treatment required for the children is concerned, it is open to the respondents to move appropriate application in accordance with law for consideration by the learned Single Judge.

6. A further grievance made by learned counsel for the respondents is that the son/respondent No. 2 is in the XII Standard and requires tuitions for which general directions have been passed. However, we find that direction in respect of school fees/tuition fees and if there is any specialized tuition required for the children, once again the respondent No. 1 would have to move the learned Single Judge in accordance with law for necessary orders in that behalf.

7. Learned counsel for the respondents at length urged that the amount of maintenance determined is inadequate. Learned counsel submits that the earning capacity of the appellant is much more as he is running a Guest House from which he is drawing higher amount of income than that which has been disclosed. Learned counsel submits that in view of the well settled legal position and needs of the wife and the children, at least 60% of the income of the appellant should be made available for the benefit of the respondents.

8. We find that taking into consideration, the income of the appellant, the learned Single Judge has taken care in fixing the maintenance amount. It cannot be lost sight of that the present

stage is one for determining interim maintenance and it is not possible to work out an exact amount as evidence is yet to be led. The amount fixed is even higher than the income reflected in the income tax returns of the appellant. In this behalf, the learned Judge has considered the Profit and Loss Account of the business. Income tax returns cannot be completely ignored as it is the function of the department to assess the income of an assessee. It has powers to determine higher amount if income is not disclosed. Be that as it may, given the prevalent position, the courts have been taking a more liberal view in determining the maintenance keeping the general trend in mind that at times, the income tax return does not reflect the full income of an assessee. Even this benefit has been made available to the respondents in the present case while determining the interim maintenance.

9. Learned Senior counsel for the appellant does not seriously contend that the interim maintenance amount and other amounts determined in terms of the impugned order call for any interference at this stage. Learned counsel, however, submits that the appellant can however not be thrown out of his house completely and some arrangement should be made for the stay of the appellant but in a manner satisfactory to both the parties.

10. We are conscious of the grievance made by respondent no. 1 of domestic violence. Learned counsel for the respondents has taken us through certain documents in that behalf. In order to safeguard the respondents, it is necessary to have an arrangement

where the flat is segregated in such a manner that there is no interaction between the two parties at the time of ingress and egress. We have taken note of the fact that the allegations of the respondents is that the appellant No. 1 resides with his mother in the ground floor of the same property. The appellant has no such right to remain with the mother though given the exigency of the situation, he may be at present residing there. This fact also shows that the appellant has continuous access to property in question.

11. Learned counsel for the appellant as well as the respondents had given their proposals and counter proposals as to how the flat ought to be divided. The two proposals given by the appellant on 8th May, 2009 have been marked 'I' and 'II'. The proposal given today by learned counsel for the respondents is marked as 'III'.

12. We have made it clear that the three bedroom house should be divided in such a manner that two bedrooms with adequate area are available for the respondents as the wife and children are staying there and one bedroom with adjacent area would suffice with the appellant who would stay alone. The area as demarcated by the respondents, however, is too inadequate for the appellant. Out of the two plans submitted by the appellant, learned counsel for the respondents, on instructions, state that the plan at 'II' would be more appropriate than 'I'. We, however, consider it necessary to make one modification in the plan that the door at point 'A' should be closed which opens from the open staircase into

the portion proposed for the appellant and the appellant should open his own door at or near point 'B' with a spiral staircase. This will take care of the apprehension of the respondents of there being access through a common portion.

13. We may record at this stage that learned counsel for the respondents of course seeks that ideally the respondent would not like any portion of the flat to be made available to the appellant. In fact, the suggestion is that the flat should be sold and 75% of the amount given to the respondents. We find the suggestion totally unacceptable for the reason that we are not carrying out any division of the estate in the present appeal and the appellant must be provided with some place of residence in a property owned by him. It is not acceptable that the appellant is thrown out on the road while the whole flat continues to be with the respondents. We have already taken care to ensure that a larger area is available with the respondents and there is minimal possibility of interaction with the appellant. The three bedroom flat is divided in a manner where two bedrooms are with the respondents along with the drawing and dining area, kitchen, toilet and a pantry while the appellant has one bedroom, toilet and a drawing/dining area. The appellant will apparently have to make some arrangements for his kitchen in the space available with him. In case the respondents want another toilet to be made in the area earmarked for them, learned counsel for the appellant volunteers to bear the costs for

the same. In this behalf, the respondents may inform the Local Commissioner, who is being appointed.

14. We are thus of the considered view that the direction contained in sub-para (iv) of para 7 of the impugned order needs to be modified in the aforesaid terms. The segregation would require some work to be done for which the costs shall be borne by the appellant. Needless to say that the respondents would give appropriate access to the workmen to carry out the task. The respondents to make available the premises for said work w.e.f. 18.05.2009.

15. In view of the estranged relationship between the parties, it would be appropriate to appoint a Local Commissioner to monitor the completion of the work.

16. We have requested Mr. Sandeep Sharma, Advocate, A-363, Defence Colony, New Delhi, Contact No. 9811022432, who is present in the Court, to act as a Local Commissioner. The fee of the Local Commissioner is fixed for Rs. 25,000/- apart from out of pocket expenses to be borne by the appellant.

17. The appeal, cross objections and the application for condonation of delay are accordingly disposed of in the aforesaid terms leaving the parties to bear their own costs.

18. We still hope that the parties are able to find some final solution to their dispute. However, though we have put to the parties whether they are willing to go for mediation, only the appellant expressed his intent to do so but respondent did not.

19. At this stage, learned counsel for the respondents state that her client has reconsidered the matter and would like an endeavour to be made before the Delhi High Court Mediation & Conciliation Centre on 20th May, 2009, making it clear that pendency before the Mediation Centre would have no ramification on the implementation of the order passed by us today. The Mediation Centre to appoint a Mediator of sufficient seniority who has expertise in handling matrimonial matters.

20. List for directions on 31st July, 2009 for report of the Mediator as well as the Local Commissioner.

SANJAY KISHAN KAUL, J.

MAY 14, 2009
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SUDERSHAN KUMAR MISRA, J.