

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

+ CM(M) 949/2009 & CM No.12782/2009

Date of Decision: March 08, 2010

GURPREET SINGH Petitioner
Through: Mr.Tiger Singh, Advocate
with Petitioner in person.

versus

SMT. DIMPLE & ANR. Respondents
Through: Mr.Raj Kumar, Advocate
with Respondent in person.

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CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper 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 ?

J U D G M E N T

ARUNA SURESH, J. (Oral)

1. Parties to the petition were married on 27th February, 2005. A female child was born from the wedlock of the parties on 10th December, 2005. Various disputes and differences arose between the parties, which resulted into filing of a divorce petition

by the petitioner/husband under Section 13(1) (ia) & (ib) of the Hindu Marriage Act (hereinafter referred to as the 'HM Act'). In the said petition, respondent filed an application under Section 24 of HM Act seeking maintenance for herself as well as for the minor daughter, who since after separation of parties is in custody of the respondent. While allowing application of the respondent, Trial Court in its order dated 16th April 2009, observed:-

“ Keeping in view whatever material the parties have placed on record, I deem it fit case to allow monthly maintenance to the applicant-wife at the rate of Rs.2500/- for herself and Rs.1000/- per month for the minor daughter w.e.f. Jan,2008, to be paid by 7th of each calendar month during pendency of main petition. Arrears to be paid in six months. It is made clear that amount of interest if any withdrawn by the applicant on the above mentioned amount of Rs.3.75 lacs lying deposited for three years, shall be adjusted against the amount of maintenance awarded to the female child.”

Besides, Trial Court also awarded litigation expenses amounting to Rs.10,000/-.

2. Learned counsel for petitioner has submitted that monthly salary of the petitioner is Rs.5,500/-. The quantum of maintenance awarded by the court comes to Rs.3,500/- per month, which is on higher side as petitioner is not capable of paying the

maintenance as awarded. It is further submitted that petitioner had deposited a sum of Rs.3.75 lacs in the form of an FDR in criminal case, which was registered against the petitioner on the complaint of the respondent and respondent is having interest income of about Rs.2,700/- per month. Interest income received by the respondent is to be adjusted towards maintenance awarded by Trial Court and liability of the petitioner remains for the balance amount of Rs.700 to Rs.800, which the Trial Court failed to consider.

3. Learned counsel for the respondent countered these submissions stating that amount of Rs.3.75 lacs was deposited by the petitioner against dowry articles/jewellery at the time of bail in the criminal case registered against him and said deposit was without prejudice to rights of both the parties. Therefore, according to him, petitioner is not entitled to adjust interest income from said deposit towards maintenance awarded by Trial Court to respondent as well as to the child.

4. On complaint of the respondent, an FIR bearing No.436/07, Police Station Hari Nagar, under Sections 406/498-A/34 IPC was registered against the petitioner and his other family members. In the said case, Mr.Arun Kumar Arya, learned Additional Sessions Judge vide order dated 30th November 2007,

passed, on an application of the petitioner seeking bail, accepted the offer made by the petitioner and other accused persons to deposit a sum of Rs.3.75 lacs against dowry articles/jewellery, without prejudice to rights of both the parties. Accordingly, court directed appellant to deposit the said amount in the form of an FDR for a period of three years in the name of the respondent. It was further ordered by the Court that the said FDR would contain an endorsement that interest accruing on the said FDR amount would be given to the respondent for upkeepment of the female child Meher Preet Kaur. It is noted that this offer was accepted by the respondent.

5. The said order was complied with and a sum of Rs.3.75 lacs was deposited for three years on 11th December, 2007. Respondent, who is present in Court, has admitted that in pursuance of the order of learned Additional Sessions Judge, she is getting a sum of Rs.2,695/- as interest every month for upkeepment of the child. In the impugned order, Trial Court awarded maintenance of Rs.1,000/- per month for the child w.e.f. January, 2008 and Rs.2,000/- per month to the respondent. It was made clear by the Trial Court that amount of interest, if any, withdrawn by the respondent on deposited amount of Rs.3.75 lacs would be adjusted

against the amount of maintenance awarded to the female child.

6. It is a settled principle of law that if maintenance is awarded in different Forums by different courts, wife and child are entitled to the highest amount of maintenance awarded by any of the said courts. In this case, highest maintenance has been awarded by learned Additional Sessions Judge in criminal proceedings by way of interest accruing on the FDR of Rs.3.75 lacs amounting to Rs.2,695/- per month. Hence, child is entitled to maintenance, as awarded in criminal proceedings, being the highest amount awarded. Therefore, Trial Court rightly directed respondent to adjust the maintenance of Rs.1,000/- as awarded by the impugned order against payment being received as interest from bank every month.

7. Thus, it is clear that once maintenance amount of Rs.1,000/- is adjusted in interest income for upkeepment of the child, liability of the petitioner is reduced to Rs.2,500/- per month, being maintenance awarded to the wife. Petitioner cannot claim adjustment of entire interest amount against the maintenance awarded to the wife and the child cumulatively.

8. As pointed out above, interest income was only for the child and therefore, petitioner cannot claim any adjustment of maintenance payable by him to his wife against the said interest

income. If it is allowed, it would be detrimental to the interest of the child, and an unfair advantage to the petitioner. Amount of maintenance, as awarded by the Trial Court to the wife is just and proper. I find no reason to interfere in the same. Besides, quantum of maintenance awarded to the wife has not been specifically challenged by the petitioner.

9. Hence, I find no merits in this petition. The same is accordingly dismissed. Petitioner has given an undertaking that he would not object to the respondent getting the FDR revalidated on its maturity. He shall be bound by the same. Respondent shall ensure that FDR is renewed before it expires so as to ensure that the interest income is regularly available for benefit of the child.

CM No.12782/2009 (for stay)

10. With dismissal of petition itself, this application has become infructuous. Hence, same is accordingly dismissed.

ARUNA SURESH, J.

MARCH 08, 2010
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