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THE HIGH COURT OF DELHI AT NEW DELHI

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Crl. MC No.3562/2009

**Reserved on: 02.11.2011
Pronounced on: 09.11.2011**

KUKU RAM

..... Petitioner

Through: Mr. S.C. Munjal, Advocate

Versus

RAM BETI

..... Respondent

Through: Mr. H.S. Gautam, Advocate

**CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA**

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

M.L. MEHTA, J.

1. This is a petition under Article 227 of the Constitution of India read with Section 482 Cr.P.C for quashing/ modifying the order dated 11.9.2009 of learned ASJ which was passed in a revision petition filed by the petitioner against the order passed by learned MM granting maintenance of Rs.6,000/- to the respondent under Section 127 Cr.P.C per month.

2. The said revision petition was filed before the learned ASJ challenging the order of learned MM under Section 127 Cr.P.C on

various grounds. However, the learned ASJ after hearing the parties was of the view that the revision petitioner must deposit the entire amount of interim maintenance as passed by learned MM up to the date of filing of the revision petition. He adjourned the matter to 7.10.2009 for the petitioner to do the needful and to comply the order of learned MM to deposit the entire amount of maintenance. Arriving on this conclusion, the learned ASJ referred to the directions of this Court as made in Crl. MC No.3089/2008 and Crl.MA 11390/2008 on 26.2.2009 in the case of "*Rajeev Parinja v. Sarika and others*". The said directions which were reproduced by learned ASJ are as under:

"When a Revision Petition is filed by the husband in the court of Learned ASJ against an order of interim maintenance passed by a learned MM in favour of the wife, the said revision petition will not be entertained by the learned ASJ till the entire amount of interim maintenance due under the order of the learned MM up to the date of filing of the revision petition is first deposited in the court of the learned ASJ. The respondent wife and child, if any, should be permitted by the learned ASJ to withdraw the whole or part of the said sum, upon such terms and conditions as may be determined by the learned ASJ."

3. From the perusal of the impugned order, it is seen that the learned ASJ has, instead of proceeding to hear the revision petition on merits, has granted opportunity to the petitioner to comply the order of learned MM and deposit the entire amount of maintenance upto the date of filing of the revision petition in terms of the aforesaid directions of this Court.

4. Learned counsel for the petitioner did not controvert this factual position. He, however, submits that the learned ASJ ought to have heard the petitioner on merits of the case instead of proceedings to pass such an order. To my view, the submissions of learned counsel for the petitioner are entirely untenable in view of directions given by this Court in the aforesaid case. The aforesaid directions came to be passed by this Court in the backdrop of the following observations and with which I am in full agreement. The observations as made in para 15 of the aforesaid order reads thus:

“15. The other phenomenon that requires to be discouraged is that a mere filing of a revision petition by a husband against an order granting interim maintenance to the wife and/or child is construed as an implied stay of that order. As a result the wife has to wait for an even longer period for the implementation of the order in her favour. The method that should be deployed to overcome this hurdle is

for the revisional court to insist that the husband's revision petition will not be entertained till such time the husband against whom the order of interim maintenance has been passed, deposits the entire arrears of interim maintenance up to the date of in terms of the said order of the learned MM in the court of the learned ASJ. Otherwise the husband will be able to indefinitely postpone the implementation of the orders of interim maintenance by driving the wife from one court to another without her receiving any payment whatsoever. This only compounds the agony of the wife and serves to defeat the interest of justice. This situation ought not to be allowed to continue if justice in the real sense should be done to an Indian wife who is in dire straits and unable to survive with her child for want of economic means of subsistence."

5. In view of the above, I do not see any infirmity or illegality in the impugned order. The petition is dismissed. No orders as to costs.

**M.L. MEHTA
JUDGE)**

November 09, 2011
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