

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CM(M) 372/2023
CM(8127/2023)
Caveat 2537/2023.

Tahira.

...Petitioner(s)

Through: Mr. G. N. Shaheen, Advocate.

Vs.

Naseer Ahmad Khan.

...Respondent(s)

Through: Mr. Owais Shafi, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE.

ORDER
27.12.2023

01. Heard learned counsel for the parties. Caveat stands **discharged**.
02. The petitioner is aggrieved of and has called in question an Order dated 19th October, 2023 passed by the Court of 3rd Additional Sessions Judge, Srinagar (the Appellate Court) in an appeal titled "Naseer Ahmad Khan vs Tahira", whereby the Appellate Court has set aside the order of the Court of Passenger Tax and Electricity Magistrate, Srinagar (the Trial Court).
03. The impugned order is assailed by the petitioner primarily on the ground that the Appellate Court has without proper application of mind and without appreciating the legal position, in a mechanical manner, set aside the well-reasoned order of the Trial Court. It is submitted that the Trial Court has taken all the aspects of the matter into consideration and awarded interim maintenance of Rs. 6000/ per month in favour of the petitioner and Rs. 3000/- per month for hiring alternative rented accommodation. The Trial Court also took note of the fact that that respondent was in arrears of maintenance and, therefore, directed the employer of the respondent to deduct in addition a sum of Rs. 7000/- towards the arrears of maintenance.
04. *Per contra*, the learned counsel for the respondent submits that Trial Court had not considered all aspects of the matter and had not called upon the parties to submit the list of assets and liabilities, which, as laid down by the

Hon'ble Supreme Court in case of *Rajnish vs Neha*, is mandatory in nature. Learned counsel for the respondent further submits that while the Trial Court was considering the application for interim relief, it also took up the execution petition for consideration without any notice to the respondent.

05. Having heard the learned counsel for the parties and perused the material on record, I am of the considered view that the judgment passed by the learned Appellate Court in the given facts and circumstances of the case, does not call for any interference. The Appellate Court has only called upon the Trial Court to re-hear the parties, after allowing the respondent to file objections to the execution petition and pass fresh orders in accordance with law. The Appellate Court has taken note of certain aspects of the matter which the Trial Court had missed while considering the application for interim relief and passing orders in the execution petition.

06. Without going much into the details of the case, I find no reason or justification to interfere with the impugned order passed by the learned Appellate Court, that too in exercise of supervisory jurisdiction vested in this Court by Article 227 of the Constitution, however, this Court cannot lose sight of the fact that till application is reconsidered by the Trial Court in terms of impugned judgment passed by the Appellate Court, the petitioner cannot be kept high and dry and without any source of sustenance.

07. Accordingly, while disposing of this petition and allowing the Trial Court to reconsider the matter in the light of the Appellate Court's judgment, it is provided that till application is reconsidered by the Trial Court and an appropriate order on merits is passed, the employer of the respondent shall continue to deduct a sum of Rs. 9000/- per month and pay it to the petitioner.

08. **Disposed** of along with connected CM.

(SANJEEV KUMAR)
JUDGE

SRINAGAR:
27.12.2023
"Hamid"