

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 4766 of 2023

Petitioner :- Smt. Gati Agarwal

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Nigamendra Shukla

Counsel for Respondent :- G.A.,Arvind Kumar Sahu,Vindeshwari Prasad

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Sri Nigamendra Shukla, learned counsel for the petitioner, Sri Vindeshwari Prasad, learned counsel for respondent no. 2 and learned AGA for the State.

2. This petition under Article 227 of the Constitution has been filed with a prayer that the order dated 19.01.2023 passed by the Additional Sessions Judge, Meerut in Criminal Appeal No. 68 of 2022 (Dr. Anurag Agarwal vs. State of U.P. and Another), be set aside.

3. Relevant facts are as below:-

(i) Smt. Gati Agarwal filed an application under section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the DV Act") against husband-Dr. Anurag Agarwal and 3 others, with the allegations in nutshell that she is the victim of domestic violence perpetrated by her husband and other members of his family. The OPs appeared. Both the sides led evidence. The trial court, after hearing both the sides, passed a judgment on 10.10.2018 and besides passing protection order and residence order, directed the opposite party to pay Rs. 3,000/- per month each for maintenance of three minor children and Rs. 1 lakh as compensation to the applicant.

(ii) Both the sides preferred appeals. Appeal no. 149 of 2018 was filed by Smt. Gati Agarwal against the opposite side, mainly for enhancement of maintenance and compensation. The husband filed Criminal Appeal No. 168 of 2018 against his wife for setting aside the order of the trial court. Both the appeals were decided together. The appeal no. 168 of 2018 was dismissed. The Criminal Appeal No. 149 of 2018 was partly allowed directing the husband to pay Rs. 5,000/- per month to Km. Shubhangi, Km. Vatsala and Anugrah from 10.10.2011 i.e., the date of complaint. The husband was further directed to pay Rs. 4 lakhs as compensation to the wife.

(iii) Challenging the order passed in appeal, the husband preferred a Criminal Revision no. 1123 of 2020, in which following order was passed by the High Court:-

"Meanwhile, operation of the impugned order dated 29.02.2020 passed in Criminal Appeal No.149 of 2018 shall remain suspended on condition that the Revisionist shall deposit a sum of Rs.1 lac before the Magistrate under the head of compensation payable to his wife and shall deposit the entire arrears of maintenance payable to the children at the rate of Rs.4,000/- per month, all to be done within two months of date. The sum of money, if deposited by the Revisionist, in compliance with this order with the Magistrate, shall be paid to the wife and the children respectively without any security. In the event of default, this interim order shall stand automatically vacated."

(iv) The trial court passed an order dated 27.05.2022 taking a view that the revisionist did not comply with the conditions of the aforesaid interim order, therefore, the stay order has vacated and directed the opposite party to pay compensation and the maintenance, as per the order of the appellate court dated 29.02.2020.

(v) The husband OP preferred another Appeal no. 68 of 2022, challenging the vacation of interim order dated 27.05.2022. This appeal was decided by the Additional Session Judge, Court No. 5, Meerut by order dated 19.01.2023. The appeal was allowed and the order of the trial court dated 27.05.2022 was set aside. Now, the wife is before this court challenging the order of the appellate court.

4. The contention of the petitioner is that necessary conditions imposed by the High Court in criminal revision were flouted. The opposite party did not pay requisite amount of maintenance and compensation in time. The High Court had said that the opposite party shall pay Rs. 1 lakh within 2 months and the entire arrears of maintenance @ Rs. 4,000/- per month within 2 months of the order (07.07.2020). The amount was not paid within the stipulated period, therefore, the interim order was rightly vacated.

The contention is that order of appellate court setting aside Magistrate's order is without any reasoning and is not sound at all. The appellate court wrongly applied the law laid down by the judgment of the Supreme Court passed in extra-ordinary covid conditions. It is further contended that, even if the time period is taken to have been extended in the light of judgment of the Supreme Court, the amount, which was paid, was not in terms of the order.

5. From the submissions of the both the sides, the controversy seems to be confined on two points. First, whether the time period of two months for payment could have been extended, in the light of the judgment of the Supreme Court applicable at that time, in the wake of extra-ordinary covid conditions? Secondly, whether in the light of the order of the revisional court, the revisionist was obliged to pay the entire arrears and that entire arrears should be calculated from the date of the complaint and not from any subsequent date?

On the other hand, respondent contends that the arrears shall be counted in terms of the order of the trial court and not in terms of the order of the appellate court.

6. In view of the above arguments, certain calculations need to be done. The revisional court, by its interim order dated 07.07.2020 directed the revisionist husband to deposit entire arrears of maintenance @ 4,000/- per month. The question is which will be the initial date for counting the entire arrears? My view is that by means of that revision, the order of the appellate court was challenged. The appellate court had directed as below:-

"परिवाद की तिथि अर्थात् दिनांक 10.10.2011 से प्रत्येक बच्चे कु० सुभांगी, अनुग्रह और कु०

वत्सला को पांच पांच हजार रुपये उनके बालिग होने तक प्रतिमाह अदा करे। ”

There is no controversy, as regard the dates when children became major. The revisionist has given some calculations in his rejoinder affidavit. Para-17 discloses that @ Rs. 4,000/- per month, if calculated from the date of the complaint i.e. 10.10.2011, till the majority of each one of the recipients, for Km Shubhangi Agarwal the amount is Rs. 2,24,000/- for 56 months; for Anugrah Agarwal the amount is Rs. 2,96,000/- for 74 months and for Km. Vatsala Agarwal the amount is Rs. 3,52,000/- for 88 months. This may be noted that there is no controversy, as regard their date of majority and the aforesaid calculations. The total amount for three children is Rs. 8,72,000/-, in case the same is counted from the date of the complaint, till they attain majority, @ Rs. 4,000/- per month.

7. In the counter affidavit, the opposite party has said that till now he paid Rs. 1 lakh to Smt. Gati Agarwal. And excluding that amount, the opposite side has merely paid Rs. 8,000/- by demand draft to Km Vatsala Agarwal and Rs. 5,000/- plus Rs. 3,000/- on 19.11.2018 i.e., before any order of revision was passed and one more sum of Rs. 9,000/- to Smt. Gati Agarwal. The contention of the opposite party is that the amount should have been counted in terms of the order of the trial court dated 10.10.2018. Further, it is pointed out that the trial court simply ordered the OP to pay monthly sum without specifically disclosing that whether the same shall be payable from the date of order or from the date of application. Therefore, the calculation shall run from the date of order i.e., 10.10.2018. In above circumstances, he has actually paid excess amount.

8. The appellate court seems to have calculated the entire arrears from the date of the order of the ACJM and not from the date which is disclosed in impugned order of the appellate court.

9. In my view, when the order, which was challenged before the revisional court had directed the opposite party to pay maintenance from the date of the application and that very order of appellate court was under challenge and was suspended, subject to certain conditions, the only logical conclusion which can be drawn is that the court, by means of using the word 'entire arrears' had, the order of the appellate court in mind. In my opinion, the inference drawn by the appellate court in this matter was devoid of logical reasoning and therefore this is the case where the powers under Article 227 of the Constitution should be exercised. This fact remains at its place that the respondent did not pay the entire arrears, as had became due on him in terms of the order of the appellate court dated 29.02.2020. The order of the appellate court dated 19.01.2023 suffers from illegality and arbitrariness.

10. In view of the above, the petition is **allowed**. The order dated 19.01.2023 passed by the Additional Sessions Judge, Meerut in Criminal Appeal No. 68 of 2022, is hereby **set-aside**.

11. A copy of the order be certified to the court concerned.

Order Date :- 12.10.2023

#Vikram/-Sumit Kumar