

Neutral Citation No. - 2023:AHC-LKO:84504

Court No. - 11

Case :- APPLICATION U/S 482 No. - 5498 of 2023

Applicant :- Manoj Kumar Yadav

**Opposite Party :- State Of U.P. Thru. Prin. Secy. Home U.P
Sectt. Lko. And Others**

Counsel for Applicant :- P.K. Mishra

Counsel for Opposite Party :- G.A.,In Person

Hon'ble Saurabh Lavania,J.

Heard Sri P.K. Mishra, learned counsel for the applicant, Smt. Kiran Yadav, opposite party No.2, in person and learned AGA for the State.

By means of the present application, the applicant has assailed the order dated 24.09.2022 passed by the Civil Judge (J.D.) FTC/J.M., Faizabad in Complaint Case No. 316 of 2012 (Kiran Yadav & Another vs. Manoj Yadav) as also the order dated 16.01.2023 passed by the Additional Sessions Judge/Special Judge, POCSO Act, Ist, Faizabad in Criminal Appeal No. 51 of 2022, Computerized No. 53 of 2022 CNR-UPFZ010066462022 (Manoj Yadav vs. State of U.P. & Others).

It appears from the record that an application was preferred under Section 12 of Protection of Women from Domestic Violence Act, 2005 (in short "D.V. Act") by the opposite party Nos.2 and 3 namely Kiran Yadav and Kumari Shreya (Wife and Daughter, respectively, of the applicant) and this application was registered as Complaint Case No. 325 of 2016 (Kiran Yadav & Another vs. Manoj Yadav & Others) and this case was allowed vide order dated 20.09.2021 by Judicial Magistrate-II, Faizabad. As per order dated 20.09.2021, the

applicant is under obligation to pay Rs. 20,000/- as damages to the opposite party No.2-Smt. Kiran and Rs. 15,000/- to the opposite party No.3-Kumari Shreya, daughter of the applicant and the applicant is also under obligation to pay 1500/- to opposite party No.2 and Rs. 1000/- to opposite party No.3, as maintenance, per month and further, the applicant is also under obligation to provide rented accommodation to the opposite party Nos.2 and 3. The relevant portion of the order dated 20.09.2021 reads as under:-

"परिवादिनी का प्रार्थना पत्र अंतर्गत धारा 12 घरेलू हिंसा से महिलाओं का संरक्षण अधि०, 2005 स्वीकृत किया जाता है। विपक्षी सं० 1 मनोज कुमार यादव को आदेशित किया कि वह परिवादिनी को क्षतिपूर्ति के रूप में निर्णय के दिनांक से दो माह के भीतर एकमुश्त 20,000/-रु० (बीस हजार रु०) तथा परिवादिनी सं० 2 श्रेया, जो विपक्षी सं० 1 की नाबालिग पुत्री है, को एकमुश्त 15000/-रु० (पंद्रह हजार रु०) को प्रदान करे। परिवादिनी को प्रतिमाह भरण-पोषण हेतु 1500/-रु० (पंद्रह सौ रु०) व परिवादिनी सं० 2 श्रेया को प्रतिमाह भरण-पोषण हेतु 1000/-रु० (एक हजार रु०) निर्णय की तारीख से हर माह दस तारीख के पूर्व परिवादिनी को प्रदान करें। इसके अतिरिक्त विपक्षी सं० 1 मनोज कुमार यादव, विपक्षी सं० 2 जयराम यादव व विपक्षी सं० 3 मनभावती उर्फ जुगुरा को आदेशित किया जाता है कि वह परिवादिनी के विरुद्ध भविष्य में घरेलू हिंसा कारित न करें। विपक्षी सं० 1 मनोज कुमार यादव परिवादिनी को निवास हेतु किराए का कमरा उपलब्ध कराए तथा उसे किसी भी प्रकार से प्रताड़ित नहीं करें। इस आदेश की एक प्रति परिवादिनी को निःशुल्क उपलब्ध कराई जाए तथा एक प्रति संबंधित थाना महिला थाना फैजाबाद को आदेश के अनुपालन हेतु प्रेषित की जाए।"

The order dated 20.09.2021 was assailed by the applicant by means of Criminal Appeal No. 41 of 2021 before the appellate court i.e. Additional Sessions Judge, Court No. 3, Faizabad and the appellate court vide order dated 18.04.2022 affirmed the order of the Judicial Magistrate-II, Faizabad dated 20.09.2021. The operative portion of the order dated 18.04.2022 reads as under:-

"प्रस्तुत आपराधिक अपील निरस्त की जाती है। विद्वान अवर न्यायालय द्वारा परिवाद संख्या 325/18, किरन यादव एवं एक अन्य बनाम मनोज

यादव एवं अन्य, अन्तर्गत धारा 12 घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, थाना महिला, थाना, फैजाबाद में पारित निर्णय व आदेश दिनांकित 20-09-21 पुष्ट किया जाता है।

विद्वान अवर न्यायालय की पत्रावली निर्णय की प्रति के साथ अवर न्यायालय को वापस प्रेषित की जाय।"

It further appears from the record that the opposite party Nos.2 and 3 preferred an application for execution of the order dated 20.09.2021, which was registered as Complaint Case No. 316 of 2012 (Kiran Yadav & Another vs. Manoj Yadav) and in this case, an application dated 24.08.2022 was preferred by the present applicant-Manoj Yadav seeking amendment in the final order dated 20.09.2021 passed in the Case No. 325 of 2016 and the same was rejected vide impugned order dated 24.09.2022 passed by the Civil Judge (J.D.) FTC/J.M., Faizabad after observing that the order passed in the execution proceeding of final order dated 24.09.2022 the same cannot be amended/corrected and by this order the court also directed the applicant to pay Rs. 5,000/- towards rent to opposite party No.2. Operative portion of the order dated 24.09.2022 reads as under:-

"As per perusal of order shut and after hearing both parties, order dated 20/09/2021 cannot be amended because the order was on merit and same order was upheld by appellant court as per order dated 18/04/2022. Present suit is only for execution under section 31 to ensure compliance of protection order. As per section 47 of Code of Civil procedure executing court will not go behind merits of decree, only execution of complete decree is done by executing court. Thus, application dated 24/08/2022 of defendant is rejected.

Defendant is directed to ensure compliance of complete order dated 20/09/2021 Defendant had to make arrangement of complainant for living by providing her rent of rented place. Hereby defendant is directed to pay Rs.- 5,000/- as rent of rented place of complainant as per rent agreement filed by

complainant. File to be put up on 30/09/2022 for further order."

The order dated 24.09.2022 was assailed by the applicant before the appellate authority Additional Sessions Judge/Special Judge, POCSO Act, Ist, Faizabad by means of Criminal Appeal No. 51 of 2022 and the appellate court vide order dated 16.01.2023 affirmed the order of Civil Judge (J.D.) FTC/J.M., Faizabad.

In the aforesaid background of the case, the present application under Section 482 Cr.P.C. has been preferred.

Assailing the impugned order(s) dated 24.09.2022 and 16.01.2023, the learned counsel for the applicant submitted that Executing Court i.e. Civil Judge (J.D.) FTC/J.M., Faizabad has exceeded its jurisdiction by directing the applicant to pay Rs. 5,000/- towards rent to the opposite party No.2 and this aspect was not taken note of by the appellate court. Elaborating this aspect of the case, he submitted that as per direction of the Court of first instance under the D.V. Act namely Judicial Magistrate-II, Faizabad, the applicant was under obligation to provide rented accommodation and there is no direction to pay Rs. 5,000/- per month towards rent and taking note of the same as also the settled law on the issue that the Executing Court cannot travel beyond the decree passed by the trial court, indulgence of this Court is required in the matter.

The opposite party No.2, Smt. Kiran, in person on being asked says that there is no such direction in the order dated 20.09.2021, according to which, the applicant is under obligation to pay Rs. 5,000/- per month towards rent.

Considered the aforesaid submissions and perused the record.

As per the directions in the Order dated 20.09.2021 of the court of first instance under the D.V. Act namely Judicial Magistrate-II, Faizabad, the applicant is under obligation to pay Rs. 20,000/- to the opposite party No.2-Smt. Kiran and Rs. 15,000/- to the opposite party No.3-daughter of the applicant and the applicant is also under obligation to pay Rs. 1500/- to opposite party No.2 and Rs. 1000/- to opposite party No.3, as maintenance, per month and applicant is also under obligation to provide a rented accommodation and in the order dated 20.09.2021 there is no such direction, according to which, the applicant is under obligation to pay Rs. 5,000/- per month towards rent. Accordingly, this Court is of the view that Civil Judge (J.D.) F.T.C./J.M., Faizabad i.e. Executing Court exceeded its jurisdiction in directing the applicant to pay Rs. 5,000/- as rent vide order dated 24.09.2022.

Thus, for the reasons aforesaid, the direction to pay Rs. 5,000/- in the order dated 22.04.2022 affirmed vide order dated 16.01.2023 is hereby set aside.

The present application is **allowed** to the aforesaid extent only.

Order Date :- 20.12.2023

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