

Court No. - 4

Case :- CONTEMPT APPLICATION (CIVIL) No. - 3972 of 2023

Applicant :- Neha Mishra

Opposite Party :- Saurabh Chaturvedi And Another

Counsel for Applicant :- Mohan Singh, Govind Kumar Chourasia

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Sri Mohan Singh, learned counsel for the petitioner.
2. Learned counsel for the petitioner has stated the the present petitioner filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the Act") against opposite party no.1 in the year 2017 wherein one order dated 04.07.2019 has been passed. Feeling aggrieved from the order dated 04.07.2019, Criminal Appeals No.281 of 2019 & 282 of 2019 have been filed. When both the aforesaid appeals were not decided within expedition, the petitioner filed an application before this Court under Article 227 of the Constitution of India bearing Matters Under Article 227 No.28463 of 2021, Srimati Neha Mishra Vs. Additional District And Sessions Judge/Spl J Pocso-2 Lko. And Anr., wherein the order dated 31.01.2022 has been passed, which reads as under:-

"Heard learned counsel for the petitioner, learned A.G.A. for the State and perused the record.

Learned counsel for the petitioner prays for the following reliefs :

"A.Respondent No.1 to execute application for recovery of maintenance, as contained in Annexure No.5 to this petition, filed in Crl. Appeal No.281 of 2019 (Saurabh Chaturvedi Vs. State of U.P. & anr.) under the Protection of Women from Domestic Violence Act, 2005, within a period of one month.

B. The Hon'ble High Court may be pleased enough to enforce the payment of the arrears of maintenance in the light of the law laid down in "Smt. Shail Petitioner Vs. Manoj Kumar and others Respondents", as reported in A.I.R.2004 SC 3210 - 2004) 4 SCC 785"

Learned counsel for the petitioner has submitted that to execute application for recovery of arrears of maintenance dated 28.01.2021 amounting to Rs.4,70,667/- within a period of one month. Thus, the prayer of the petitioner is an innocuous to decide the recovery proceedings against respondent no.1 within the time framed. On account of surge of

Covid - 19 pandemic, most of the district courts are not running smoothly.

So, in these circumstances, learned trial court is hereby directed to complete the recovery proceedings within a period of three months, if there is no legal impediment.

With these directions, the petition is, accordingly, disposed of."

3. In compliance of the aforesaid order, the proceedings were concluded vide order dated 03.01.2023 passed by the Civil Judge (J.D.)/ Judicial Magistrate, Fast Track Court (Crime Against Women), Lucknow, whereby appropriate direction has been issued under Section 19 of the Act directing the private opposite party to make payment of Rs.5,000/- per month; order under Section 20 of the Act has been passed directing the private opposite parties to make payment of Rs.10,000/- per month and order under Section 22 of the Act has been passed directing the private opposite party to make payment of Rs.1,00,000/- to the petitioner as compensation for mental and physical agony within a period of 45 days. When the order dated 03.01.2023 passed by the aforesaid Court has not been complied with within time so stipulated, the petitioner filed an application before the Civil Judge (J.D.)/ FTC (Crime Against Women), Lucknow on 03.03.2023 for recovery of maintenance etc under Rule 6 (5) of the Protection of Women from Domestic Violence Rules, 2006 (hereinafter referred to as "the Rules, 2006"). Virtually, the aforesaid application has been filed seeking execution of the order dated 03.01.2023 passed by the Court concerned (supra).

4. Learned counsel for the petitioner has stated that in the aforesaid case, the Court concerned has fixed various date but the execution order has not been passed till date, therefore, this is a deliberate and willful contempt on the part of the Court concerned besides by the private opposite party.

5. Attention has been drawn towards the dictum of the Apex Court in re; **Rajnesh vs. Neha and Another, (2021) 2 SCC 324**, referring para-126, which reads as under:-

"126. Striking off the defence of the respondent is an order which ought to be passed in the last resort, if the Courts find default to be wilful and contumacious, particularly to a dependant unemployed wife, and minor children. Contempt proceedings for wilful disobedience may be initiated before the appropriate Court."

6. Sri Mohan Singh has stated that in the aforesaid paragraph, the Apex Court has held that if the Court finds default to be willful and contumacious, particularly to a dependant unemployed wife, and minor children, contempt proceedings may be initiated before the appropriate Court.

7. Having heard learned counsel for the petitioner and having perused the material available on record, relevant provisions of law as well as the dictum of the Apex Court in re; **Rajnesh** (supra), I am of the considered opinion that if there is any mechanism specifically provided under the Statute/ Act/ Rule to execute the order of the Court and such proceedings have been adopted, only that Court can pass appropriate order. This is not a case where the order of the Court concerned may not be executed but the order of the Court may be passed under Rule 6 (5) of the Rules, 2006. If the Court concerned could not conclude the proceedings under Rule 6 (5) of the Rules, 2006, it may not be observed that the Court concerned has committed contempt inasmuch as in the memo of contempt petition, opposite party no.2 is Additional Civil Judge (Junior Division)/FTC. As per my considered opinion, in that case, any appropriate application may be filed before this Court for seeking prayer for early disposal of those proceedings.

8. The Apex Court in re; **Rajnesh** (supra), in para-126, has observed that if the person against whom any order or decree has been issued and if he/she does not obey the direction of the Court concerned, the contempt proceedings may be initiated, but in the present case, the petitioner has already approached the Execution Court seeking execution of the order of the Court concerned, which is still pending consideration and as per para-126 in re; **Rajnesh** (supra), the Court concerned may not be held contemnor if the proceedings have not been concluded with expedition.

9. Paper-book reveals that the appropriate order has been passed by the Court concerned on 03.01.2023 and more than ten months' period has passed, the order dated 03.01.2023 has not been complied with and more than eight months' period has passed when the application under Section 6 (5) of the Rules, 2006 has been filed but the Court concerned has not executed the order dated 03.01.2023. In the present case, the applicant is lady, who is alleged to have been suffering since 2017, therefore, the Execution Court should not keep those proceedings pending for long time, but if there is some delay in concluding the proceedings, the Court concerned may not be held contemnor.

10. However, the petitioner may file appropriate application before this Court making prayer that the proceedings pending under Rule 6 (5) of the Rules, 2006 may be expedited and concluded with expedition, but no order under Section 10 of the Contempt of Courts Act, 1971 can be passed. Any order under Section 10 of the Contempt of Courts Act may be passed only in a case where the order passed by the Court concerned is not

liable to be executed, therefore, the High Court under Section 10 of the Contempt of Courts Act, 1971 may pass appropriate order executing the order of the Court. In the present case, for the sake of repetition, it is fact that the petitioner has already filed an application under Rule 6 (5) of the Rules, 2006 seeking execution of the order dated 03.01.2023.

11. Accordingly, the present contempt petition is **dismissed**.

[Rajesh Singh Chauhan,J.]

Order Date :- 9.11.2023

RBS/-