

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(218)

**CRR (F)- 19-2013 (O&M)
Decided on: December 07, 2015.**

Mandeep

.... Petitioner

Versus

Kavita

..... Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Rajbir Sehrawat, Advocate, for the petitioner.

None for the respondent.

M.M.S. BEDI, J (ORAL)

This is a revision petition challenging the order dated 01.03.2013 passed by District Judge, Family Court Hisar granting maintenance @ Rs.6,500/- per month to respondent-wife in proceedings under Section 125 Cr.P.C.

The main contention of learned counsel for the petitioner is that without assessing the income of the petitioner, amount of maintenance payable to the respondent-wife has been awarded. It has been contended by learned counsel for the petitioner that another application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 has been filed by the respondent and the Court of competent jurisdiction has awarded a sum of Rs.1500/- per month as interim maintenance to the respondent in those proceedings.

None appeared on behalf of the respondent.

I have heard learned counsel for the petitioner and gone through the order passed by the District Judge, Family Court, Hisar.

Perusal of the order indicates that the petitioner-husband has been running a sanitary/hardware shop at Panchkula and earning Rs.40,000/- per month besides he being owner of 2 acre of land and earning Rs.30,000/- per month for the agricultural work.

Learned counsel for the petitioner has submitted that pursuant to the interim order passed by this Court, the petitioner has been paying a sum of Rs.3,500/- per month. He has also argued that the wife had filed a petition for divorce, which has been allowed. The respondent is stated to have re-married. He has further argued that the entire arrears having been paid @ Rs.3,500/- per month, the petition can be disposed of by reducing the monthly maintenance from Rs.6,500/- to 3,500/- per month.

I have considered the facts and circumstances of the case.

The order passed by the competent Court exercising the powers under Section 12 of Protection of Women from Domestic Violence Act, 2005 appears to be a cryptic order whereas the order passed by the Family Court is a detailed order taking into consideration the evidence produced before it. Interim order passed by the Court under Section 12 of Protection of Women from Domestic Violence Act cannot have over-riding effect over the order passed by the Family Court after leading the evidence.

It has been brought to my notice that respondent-wife had made a statement on 06.01.2015 before the Family Court that she reserves her right regarding maintenance subject to final decision of the present revision petition. Copy of the order has been made available by counsel for the petitioner.

In view of the totality of above said circumstances, I am of the opinion that maintenance @ Rs.5,000/- per month w.e.f. date of application

would be reasonable and just to the respondent as sufficient evidence regarding the income of the petitioner had not been produced. The petitioner present in the Court is an able bodied person and has got moral and legal obligation to maintain his wife. The statutory right of the wife cannot be defeated by the order passed mentioned hereinabove.

In view of above, the petitioner is partly allowed. The amount of maintenance is reduced from Rs.6,500/- to Rs.5000/- per month w.e.f. date of application. It will be open to the respondent to recover balance of the amount of maintenance as per law after adjustment of the amount already received by her.

(M.M.S. BEDI)
JUDGE

December 07, 2015
harsha