

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **C.M. (M) No.78/2013 & C.M. No.1045/2013**

Decided on : 5th February, 2015

AJAY GUPTA

..... Petitioner

Through: Mr. Randhir Jain & Mr. Dhananjai Jain,
Advocates.

Versus

ANSHU GUPTA

..... Respondent

Through: Respondent in person.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a petition filed under Article 227 of the Constitution of India for setting aside order dated 19.11.2012 passed by the learned Additional District Judge.

2. I have heard the learned counsel for the petitioner. The learned counsel is unable to show to the court that there is any jurisdictional error or material irregularity in the order dated 19.11.2012 which calls for any interference.

3. The only contention urged by Mr. Jain, the learned counsel for the petitioner is that there is no direction to the petitioner to pay maintenance of Rs.2,500/- per month to the respondent. Further, it has been contended

that apart from the aforesaid observation that the petitioner is to be paid Rs.2,500/- per month, the learned counsel has contended that he is already paying a sum of Rs.6,000/- to the respondent on the basis of an order passed by the learned court in a petition under Section 125 Cr.P.C. and it has not been clarified as to whether the aforesaid amount is to be paid in addition and over and above an amount of Rs.6,000/- and this is the material irregularity.

4. I have considered the submissions. It is really very strange that the learned counsel for the petitioner contends that there is no direction to the petitioner to pay an amount of Rs.2,500/- per month in the impugned order. As a matter of fact, the operative portion of the order categorically makes a mention that the petitioner is to pay maintenance of Rs.2,500/- per month to the respondent till disposal of the petition for grant of divorce, which has apparently been filed by the petitioner on the ground of cruelty and desertion. The question that the aforesaid amount of Rs.2,500/- per month has to be paid over and above a sum of Rs.6,000/-, which is being paid by the petitioner to the respondent in a petition under Section 125 Cr.P.C., is also stated to be not clear as urged by the learned counsel for the petitioner. This contention of the learned counsel does not have any merit.

5. A perusal of the impugned order shows that this submission of the petitioner that he is paying a sum of Rs.6,000/- by virtue of an order passed by the learned Magistrate was specifically taken by the petitioner

before the learned Additional District Judge as a ground for not warranting passing of any order in the application filed under Section 24 of the Hindu Marriage Act. This plea was negated by the learned Additional District Judge and rightly so, by referring to a judgment of the Punjab & Haryana High Court in case titled *Surjit Kaur vs. Tirath Singh; AIR 1978 (P&H) 112* by observing that the pre-existing order of maintenance against the husband under Code of Criminal Procedure would not be a bar for passing a fresh order of maintenance against the husband in case the facts and circumstances of the case so warrant. Therefore, this plea of the learned counsel for the petitioner also does not have any merit.

6. On the contrary, the facts of the case are that the petitioner has married the respondent and the parties are having a girl child, who is aged around 11-12 years. A total sum of Rs.8,500/-, if at all one clubs both the amounts; one which is to be paid in the petition under Section 125 Cr.P.C. and the other which is to be paid by virtue of an application filed under Section 24 of the Hindu Marriage Act, would be payable to the respondent, which would be hardly sufficient in a present day time to maintain a decent standard of living by the respondent for herself and her child.

7. The plea taken by the petitioner that he is only earning a sum of Rs.8,800/- per month from a tax consultant where he is employed, does not inspire any confidence. He has simply produced a self-serving

document purported to have been issued by MAK'S Professionals Private Limited. No credence can be attached to such a self-serving document, which can be produced by a party. In any case, this is an interim order. The parties are free to adduce evidence before the trial court if they want to show that their income has enhanced or varied or changed.

8. It is also very sad that despite the order having been passed almost more than two years back, not even a single penny has been paid by the petitioner to the respondent. Accordingly, a direction is given to the court below that before proceeding with the main matter, the petitioner should be put to terms by ensuring that the aforesaid amount of Rs.2,500/- is paid to the respondent in terms of the order of the court, failing which the proceedings be adjourned *sine die*.

9. With the aforesaid directions, the petition is dismissed.

V.K. SHALI, J.

FEBRUARY 05, 2015
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