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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: April 06, 2015

+ **CRL.M.C. 2493/2014**

SHIV NATH THAKUR Petitioner
Through: Mr. Amit Chadha, Advocate

versus

NUTAN THAKUR Respondent
Through: Ms Indu Kaul, Advocate with
respondent in person

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **JUDGMENT**
(ORAL)

In proceedings under *the Protection of Women from Domestic Violence Act, 2005*, trial court vide order of 28th July, 2010 has directed petitioner-husband to pay interim maintenance of ₹5,000/- per month to respondent and her two children, while permitting respondent herein to earn money by giving tuitions and to reside in the matrimonial household. After passing of the order of 28th July, 2010, the parties had entered into a Mediated Settlement Agreement of 26th November, 2010 at the *Delhi High Court Mediation and Conciliation Centre* which takes note of the fact that the parties are residing under the same roof with their children. It was agreed between the parties that petitioner would continue to deposit a sum of ₹3,000/- per month with respondent to enable her to meet out the

day-to-day household expenditure with the understanding that she would withdraw her present complaint under *the Protection of Women from Domestic Violence Act, 2005*. The parties fell apart in April, 2012.

During the course of hearing, petitioner had maintained that it became difficult to live with respondent and so, they fell apart and presently, they are living in their separate rented accommodation whereas, according to respondent, she had not withdrawn her present complaint because petitioner had not abided by the Mediated Settlement Agreement of 26th November, 2010. Respondent maintained that since petitioner is not living with her, therefore, he is liable to pay the arrears of maintenance at the rate of ₹5,000/-. The Executing Court vide order of 23rd October, 2013 has directed petitioner to deposit the arrears of maintenance of ₹59,000/-. The said arrears are till May, 2013. The Revisional Court vide impugned order of 6th December, 2013 has maintained Executing Court's order of 23rd October, 2013.

At the final hearing of this petition, it was submitted by learned counsel for petitioner that the reasonable amount of maintenance is ₹3,000/- per month only, which petitioner is already paying, as respondent is a teacher, who is already earning by giving private tuitions. It was submitted on behalf of petitioner that petitioner is already paying the rental of ₹5,000/- per month for the premises in which respondent is residing with her two children and he is also paying the school fee of the two children which comes to ₹6,000/- per month. Thus, it was submitted on behalf of petitioner that in view of the Mediated Settlement Agreement of 26th November, 2010, the impugned orders are unsustainable and deserve to be quashed.

Learned counsel for respondent vehemently supported the impugned orders and submitted that there is no illegality in the impugned orders. It was submitted on behalf of respondent that during the pendency of these proceedings, petitioner had cleverly moved respondent out of the matrimonial house and had put her in a rented accommodation and had sold the matrimonial house and misappropriated the sale proceeds. Learned counsel for respondent further submitted that petitioner had also sold the ancestral property in which respondent and their two children had share and had misappropriated the sale proceeds. It was submitted that the interim maintenance of ₹5,000/- is quite reasonable one and so, impugned orders deserve to be sustained.

Upon hearing both the sides and on perusal of the impugned orders and order of 28th July, 2010 vide which interim maintenance amount has been fixed and the material on record, I find that the Mediated Settlement Agreement of 26th November, 2010 (*Annexure P-4*) has become ineffective. It is difficult to hold at this stage as to who had backed out of the aforesaid Mediated Settlement. Since the aforesaid Mediated Settlement has become ineffective, therefore, this Court finds that the validity of the order of 28th July, 2010 needs to be looked into as the impugned orders flow out therefrom.

A bare perusal of the order of 28th July, 2010 (*Annexure P-3*) reveals that it does not *prima facie* conclude as to what is the earning capacity of petitioner nor it talks of the earning capacity of respondent, who claims that she is earning just ₹1,000/- per month only by teaching nursery classes in an unrecognized school. Since the primary order of 28th July, 2010 (*Annexure P-3*) is not under challenge in this petition,

therefore, impugned orders are not being interfered with in the exercise of inherent jurisdiction under Section 482 of Cr.P.C.. While entertaining this petition, petitioner was directed to furnish a bank guarantee of ₹60,000/- towards the arrears of maintenance, which petitioner claims to have done. Let the said bank guarantee be kept alive till the final maintenance amount is determined by the trial court. Let petitioner file his affidavit before the trial court in terms of decision in *Puneet Kaur v. Inderjit Singh Sawhney* (2011) 183 DLT 403 within two weeks and with particular reference to his earning capacity. Let advance copy of the said affidavit be supplied to respondent who shall also file her affidavit in terms of the decision in *Puneet Kaur (supra)* within two weeks thereafter. Let trial court make all endeavours to decide the permanent maintenance within four weeks thereafter. Till then, purely as an interim measure, petitioner shall keep the bank guarantee alive and shall continue to pay a sum of ₹3,000/- per month towards interim maintenance. It needs no clarification that if there are any arrears of maintenance amount of ₹3,000/- per month, then the same shall be cleared by petitioner within two weeks.

With aforesaid directions, this petition is disposed of while not commenting upon legality of the order of 28th July, 2010.

Trial court to submit compliance report.

(SUNIL GAUR)
JUDGE

APRIL 06, 2015

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