

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

+ **C.M. (M) No.670/2013 & C.M. No.10076/2014**

Decided on : 8th January, 2015

RAKESH KUMAR SANWARIA Petitioner
Through: Mr. D.K. Kaushik & Ms. Swati Rathi,
Advocates.

Versus

GUDDI Respondent
Through: Mr. Suresh Sisodia, Advocate.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a petition filed by the petitioner under Article 227 of the Constitution of India against the order dated 4.5.2013 by virtue of which the learned Additional District Judge (West) has fixed an ad interim maintenance of Rs.10,000/- per month, i.e., Rs.2,500/- per month for each of the applicant. It has also been clarified that this would be inclusive of and adjustable against an amount of Rs.2,500/- already awarded to them under Section 125 Cr.P.C. Apart from this, one time litigation expenses of Rs.11,000/- has been directed to be given to the respondent.

2. I have heard the learned counsel for the petitioner and have also gone through the record. The petitioner has not been able to make out any case for interference by this court as he has failed to show that there is any material irregularity or jurisdictional error in passing the order.

3. In order to appreciate the submissions, it would be relevant to given brief facts of the case. It is not disputed that the petitioner got married to the respondent in the year 1990. From the wedlock, the petitioner has three children, one daughter and two sons, who are school going children. The parties are living separately for the last number of years.

4. The present petitioner filed a petition for divorce allegedly on the ground of cruelty and desertion as stated by the learned counsel for the petitioner. The respondent filed an application under Section 24 of the Hindu Marriage Act, 1955, seeking ad interim maintenance. In the application, it was alleged that the petitioner is working as a scrap dealer (*kabaadi*) and is earning around Rs.50,000/- per month and since the respondent has no other source of income, the petitioner be directed to pay ad interim maintenance apart from litigation expenses to her. The petitioner filed reply contesting the claim that he was earning

Rs. 50,000/- per month. It was alleged by him that he is earning a meager amount of Rs.5000-6000/- per month and further he alleged that the respondent herself is taking private odd jobs from the residence and is earning around Rs.18,000-20,000/- per month. It has also been stated that the respondent has already been able to obtain an order of Rs.2,500/- per month for each of the applicant by way of an ad interim maintenance from a criminal court as a petition under Section 125 Cr.P.C. was filed by her.

5. The learned trial court, after permitting the parties to file their respective affidavits along with the documents, heard the learned counsel and assumed as a guess work, the earnings of the petitioner to be Rs.20,000/- per month and not Rs.50,000/- per month as alleged by the respondent. The basis for assuming the earnings of the petitioner to be Rs.20,000/- per month was on account of the fact that he had taken loan from a private bank (HDFC Bank) where a certain minimum balance of not less than Rs.10,000/- has to be maintained at any given time. Further he had got himself insured and was paying annual premium of Rs.16,000/-. The trial court had also examined the entries in the passbook filed by the petitioner and arrived at this conservative estimate

of the petitioner earning Rs.20,000/- per month. Out of this Rs.20,000/-, the petitioner was directed to pay a sum of Rs.10,000/- to the respondent and her children for the purpose of maintenance. The children are minor school going children. A sum of Rs.2,500/- is hardly sufficient to maintain an individual in the present day times. The amount of money which has been fixed by way of an ad interim maintenance, in my considered opinion, is not only reasonable, just and fair but is bare minimum which has been fixed by the trial court by a reasoned order which does not call for any interference by this Court.

5. The petitioner has not been able to point out any material irregularity in arriving at a conclusion as has been done by the trial court or any jurisdictional error in passing an order. Since the aforesaid order dated 4.5.2013 is an ad interim order and is to operate till the time the divorce petition between the parties is adjudicated, therefore, it does not call for any interference.

6. Accordingly, the present petition is totally misconceived and the same is dismissed.

V.K. SHALI, J.

JANUARY 08, 2015
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