

CR-1790-2015

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

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Date of Decision: 17.02.2016

Dr. Anudeep Singh

... Petitioner(s)

Versus

Dr. Geetanjali Singh

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. Amit Jain, Advocate,
for the petitioner.

Mr. Jugal Wadhwa, Advocate,
for the respondent.

Paramjeet Singh Dhaliwal, J. (Oral)

Instant civil revision has been filed under Article 227 of the Constitution of India for setting aside the order dated 12.05.2014 (Annexure P-5) passed by learned District Judge, Family Court, Gurgaon whereby an amount of ₹60,000/- per month has been granted as maintenance *pendente lite* from the date of application i.e. 16.05.2013, filed under Section 24 of the Hindu Marriage Act, 1955 (in short, 'the 1955 Act') by respondent and for setting aside the order dated 20.01.2015 (Annexure P-10) passed by learned District Judge, Family

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Court, Gurgaon whereby property bearing No.A-52/1 Chakkarpur, Gurgaon has been ordered to be auctioned in execution proceedings arising out of execution Petition No.119/DJ/FC/GGN dated 28.07.2014 filed by the respondent for executing the order dated 12.05.2014 (Annexure P-5).

I have heard learned counsel for the parties and perused the record.

It is the case of the petitioner that the respondent has already filed a petition under Section 12 read with Sections 18 to 22 of the Protection of Women from Domestic Violence Act, 2005 (in short, 'the Domestic Violence Act, 2005') before learned Metropolitan Magistrate, Saket District Courts, New Delhi, who vide order dated 07.11.2013, awarded ₹20,000/- per month as maintenance, ₹15,000/- per month towards maintenance of the minor child and ₹15,000/- per month towards rent. The amount of maintenance awarded under the Domestic Violence Act, 2005 has not been adjusted. He has further contended that the petitioner has already made the payment of ₹9,35,000/- to respondent in the proceedings under the Domestic Violence Act and has also brought the demand draft No.184787 amounting to ₹1,50,000/- and in this manner, the petitioner has paid ₹10,80,000/- to the respondent. The amount of ₹1,50,000/- is the difference of the amount awarded under Section 24 of the 1955 Act.

Be that as it may, the fact remains that the petitioner has

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been ordered to make the payment of ₹60,000/- per month as maintenance in the application filed under Section 24 of the 1955 Act by learned District Judge, Family Court, Gurgaon and ₹50,000/- as maintenance for the respondent, minor and shelter to her in the petition filed under the provisions of the Domestic Violence Act, 2005. It is settled law that the respondent can claim maintenance which is on the higher side and maintenance on lower side is to be adjusted therein. The maintenance awarded under Section 24 of the 1955 Act is to be paid till proceedings are finalized under Section 13 (1) of the 1955 Act. The main petition under Section 13 (1) of the 1955 Act has already been withdrawn on 14.07.2014, therefore, the interim order dated 12.05.2014 whereby maintenance *pendente lite* has been granted, ends with withdrawal of petition. This Court is of the opinion that when maintenance is awarded under two different Acts, the Court is required to take into consideration all the facts including the right of the applicant-wife, minor children and shelter i.e. rent for having a roof over the head of the concerned party. In the present case, the petitioner has already paid ₹9,35,000/- in the proceedings under the Domestic Violence Act, 2005 before learned Metropolitan Magistrate, Saket District Courts, New Delhi and today learned counsel for the petitioner has made the payment of ₹1,50,000/- i.e. the difference of higher maintenance and lower maintenance amount w.e.f. 16.05.2013 to 14.07.2014, through demand draft to the respondent.

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The order passed under Section 24 of the 1955 Act is a temporary and not a final determination of exact quantum to which wife would be entitled to as of right towards her maintenance allowance. When maintenance under the provisions of the Domestic Violence Act, 2005 has already been awarded, it would mean saddling the petitioner-husband with a liability to comply with both the maintenance orders and make the payment of maintenance allowance twice a month, irrespective of the question of other actual requirements of her maintenance. Since the order passed under Section 24 of the 1955 Act has ceased to exist and for a certain period, it remained in operation, then the amount awarded under the provisions of the Domestic Violence Act is required to be adjusted. There is no reason for disallowing adjustment of such payment against the amount awarded under other provisions. When the maintenance is awarded under two different provisions, the maintenance awarded on lower side should be adjusted in the maintenance awarded on the higher side and after adjustment of lesser amount, difference of amount awarded on higher side is required to be paid. Non-adjustment of maintenance is certainly a perversity in the impugned order. In such circumstances, I am inclined to hold that the amount paid by the petitioner-husband to the respondent-wife towards her maintenance under the provisions of the Domestic Violence Act is required to be adjusted against the amount payable under Section 24 of the 1955 Act.

In view of above, the amount paid by the petitioner under

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the Domestic Violence Act towards maintenance is required to be adjusted. The different provisions under which maintenance is awarded, do not intend double payment of maintenance. The amount of maintenance awarded under one provision shall be adjusted in the other. It can be safely held that plea of adjustment is maintainable. Admittedly, the object of award of maintenance is to prevent vagrancy and destitution and also to provide quick and summary remedy to a class of persons who are covered under those provisions. These provisions are measure of social justice and specially enacted to protect women and children and falls within the ambit of [Article 15\(3\)](#) reinforced by [Article 39. of the Constitution](#). If both the maintenance are allowed to be paid, it would not be in consonance with the fundamental concept of justice, equity and good conscience. In the present case, the award of maintenance under Section 24 of the 1955 Act was temporary and was on higher side whereas maintenance awarded under the provisions of the Domestic Violence Act is on lesser side, therefore, difference of amount has been paid in the Court today, itself.

Thus having regard to the facts and circumstances of the case, I am inclined to hold that the amount paid by the petitioner-husband to the respondent-wife towards her maintenance in pursuance of the order passed by learned Metropolitan Magistrate under the provisions of the Domestic Violence Act, 2005 is liable to be adjusted. Ordered accordingly.

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In view of above discussion, the impugned orders are set aside and modified to the extent that the petitioner shall pay the difference amount towards maintenance *pendente lite* in the matrimonial proceedings by deducting the amount which he is paying under the provisions of the Domestic Violence Act.

The parties will be at liberty to move the concerned Metropolitan Magistrate, Saket District Courts, New Delhi for adjustment of the maintenance as one can only get the same in one Court where the highest is awarded and lower amount is to be adjusted.

However, it will be open for the respondent to move application before the Metropolitan Magistrate, Saket District Courts, New Delhi for enhancement of maintenance in accordance with law. She will be at liberty to submit calculation before the Metropolitan Magistrate, Saket District Courts, New Delhi mentioning the amount paid to her in this Court.

Disposed of in the aforesaid terms without prejudicing rights of the parties.

17.02.2016
parveen kumar

(Paramjeet Singh Dhaliwal)
Judge