

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

CRM-M-33620-2015

Date of decision : 25.10.2016

Sandeep Singh

.....Petitioner

Versus

Gursimran Kaur & Anr.

.....Respondents

CORAM : HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Ashok Giri, Advocate,
for the petitioner.

Mr. Sandeep Arora, Advocate,
for the respondents.

Jaishree Thakur, J.

The instant petition has been filed under Section 482 Cr.P.C. for quashing and setting aside the order dated 03.01.2015 (Annexure P-8) as also the impugned order dated 16.09.2015 (Annexure P-10) dismissing the objections of the petitioner in the execution application filed for payment of arrears of maintenance.

2. In brief, the facts are that the petitioner and respondent No.1 were married on 28.11.2002 but thereafter a divorce came to be granted on 21.08.2008. The respondent-wife filed an appeal for setting aside the said ex parte divorce, however, the same was also dismissed on 04.01.2012. The respondent-wife filed an application under Section 12 of the Domestic Violence Act, 2005 (for short 'D.V. Act') at Jalandhar on 03.01.2009 seeking maintenance and alternative accommodation as well as return of

Istri Dhan. The petitioner was not served and was proceeded ex parte vide

order dated 16.04.2009. The Trial Court allowed the application of respondent-wife under Section 12 of the D.V. Act and directed the husband to provide alternate accommodation or pay rent @ ₹ 2,000/- to the respondent wife per month along with ₹ 3,000/- maintenance to both the respondents by an order dated 22.8.2009. The petitioner herein filed an appeal challenging the order before the Additional Sessions Judge, Jalandhar, however, the appeal was dismissed by an order dated 14.9.2012. Thereafter the petitioner challenged the ex parte order of the trial Court as well as the Appellate Court before the High Court in CRM-M-36338-2012 which was allowed with a direction that the petitioner shall pay arrears of ₹ 1,80,000/- in three monthly equal installments commencing from 15.6.2013, 15.7.2013 and 15.8.2013.

3. It is contended by learned counsel for the petitioner that in compliance of the order dated 27.5.2013 passed by this Court, the entire arrears of maintenance of Rs. 1,80,000/- were deposited. It is contended that the first installment which was due to be paid on 15.6.2013 was actually paid on 17.6.2013 as 15.6.2013 was a Saturday and the bank was closed by the time the petitioner reached there and since 16.6.2013 was a Sunday the earliest deposit that could be made was on 17.6.2013 and, thus, the petitioner has complied with the directions of the High Court in letter and spirit. As per the directions issued on 27.5.2013 by this Court in CRM-M-36338-2012, it was directed that in case the petitioner deposited a sum of ₹ 1,80,000/-, the matter was to be re-examined by the Court below and afresh orders were to be passed after giving due opportunity to the petitioner. However, despite having complied with the orders, the trial Court

has not re-assessed the amount to be paid and in fact the execution petition of the respondent-wife has been allowed claiming maintenance and rent has been allowed despite the fact that the ex parte orders had been set aside. It is contended that the respondent-wife had moved an application for penalizing him for not complying with the order of this Court which application came to be dismissed but while dismissing the application the trial Court made an observation that the orders of the High Court had not been complied with insofar as the first installment had not been deposited on 15.6.2013 and, therefore, the order dated 22.8.2009 assessing the maintenance ex parte was to prevail. Even the Executing Court has dismissed the objections primarily on the ground that the orders of the High Court passed in CRM-M-36338-2012 directing the petitioner to deposit the arrears of maintenance in three equal installments, had not been complied with insofar as the first installment had not been paid in time.

4. Counsel for the petitioner further contends that very act of the respondent-wife in accepting the amounts deposited by the petitioner amounts to acquiesce and waiver since no objection was raised at that point of time. Even in the execution petition filed, the petitioner has accounted by the amount received while computing the arrears/maintenance payable to her. It is also submitted that the trial Court has erred in not deciding the orders of maintenance/rent payable to the respondent wife as per the directions of this Court and as such till such determination takes place no amount is payable under the execution proceedings as initiated by wife by virtue of order dated 16.9.2015 (Annexure P-10).

5. Per contra, counsel appearing on behalf of the respondent-wife submits that there has been deliberate non-compliance of the order dated 27.5.2013 passed by the High Court, therefore, the ex parte order has not been set aside and, therefore, the petitioner is liable to pay the amount of rent/maintenance as assessed by the Court by ex parte order dated 22.08.2009.

6. I have heard learned counsel for the parties and have also perused the record of the case.

7. Admittedly, the petitioner was proceeded ex parte by the trial Court while determining the rent/maintenance as payable to the respondent-wife under an application under Section 12 of the D.V. Act wherein the petitioner was directed to pay a sum of Rs. 2,000/- towards rent and further to pay maintenance to respondent No.1 @ ₹ 2,000/- per month and a sum of ₹ 1,000/- per month to petitioner No.2 from the date of the application.

8. The appeal against the said order came to be dismissed and this Court after hearing counsel for the petitioner directed the petitioner to clear arrears in three monthly equal installments. The 1st installment to be paid on 15.6.2013 and thereafter on 15.7.2013 and the last installment to be paid on 15.8.2013. The petition filed by the petitioner challenging the ex parte order and the appeal dismissing the ex parte order was allowed and the matter was remanded to the trial Court with a direction to pass orders afresh after affording sufficient opportunity to the petitioner. It was also made clear that in case the statements suffered in Court by the counsel was not complied with, the present petition would be deemed to be dismissed. In compliance of the said order, a challan for a sum of ₹ 60,000/- being 1/3rd of the amount

so assessed was prepared by the petitioner, a photo copy of which is placed as Annexure P-5 on the record. The same was deposited on 17.7.2013. There is no dispute that the subsequent installments were deposited within time. The respondent herein instituted an application on 16.7.2013 for penalizing the petitioner herein for not complying with the order dated 27.5.2013 by averring that the installment had not been paid within time. The trial Court noted that the orders of the High Court had not been complied with. But also noted that since no amount deposited by the petitioner Sandeep Singh had been released to the respondent-wife nothing more was due to be released to her and, therefore, the application filed by the respondent-wife seeking to penalize the petitioner came to be dismissed. In the said application liberty was given to the respondent wife to file fresh execution application, if so desired, for claiming maintenance for the subsequent period. Which execution petition came to be filed on 30.9.2015 claiming an amount of ₹ 5,000/- per month due from 3.1.2009 to 3.1.2015 i.e. for 73 months and after adjustment balance amount was ₹ 1,30,000/-. The objections filed in the said petition came to be dismissed primarily on the ground that the orders of the High Court had not been complied with in time and the trial Court had taken note of the fact that since the 1st installment had not been paid within the specified period, the petition deemed to be dismissed without any further reference. On perusal of the pleadings, it is noted that the orders passed by the High Court have been complied with in letter and spirit and that there is no willful default on the part of the petitioner. The challan was prepared on 15.6.2013 and it is only on account of the fact that the Saturday being half working day the entire

process could not be completed on the same day. The petitioner made the subsequent payments well within time and the same is not disputed. The respondent-wife herein accepted the same amount without any demur and it can be said that she had waived the delay in depositing of the 1st installment. This Court is of the opinion that it is only on account of the fact that Saturday was a half day and on this count the entire process of making the payment on 15.6.2013 could not be completed.

9. The observations as made by the trial Court in its order dated 03.01.2015 (Annexure P-8) could not be held to be orders passed declining to rehear the matter after remand by the High Court. These orders came to be passed on an application that was moved by the respondent-wife for penalizing the petitioner herein for not complying with the orders and the said application was dismissed. Once the respondent herself had accepted the amount, it would not be proper for her to raise any objections and, thus, this Court is of the opinion that the observations of the order dated 3.1.2015 could not have become the ground for dismissing the objections filed in the execution petition. In any case, once the order of the High Court had been complied with in letter and spirit, without any willful default as made out of the orders of the High Court, it would have been appropriate for the trial Court to decide the issue whether or not there was deliberate non-compliance of the order or whether the order had been complied with in letter and spirit, especially in view of the fact that the balance amount had been accepted by the respondents herein.

10. It is also admitted position that no amount of maintenance has been paid to the respondents after the amount was so assessed by this Court

i.e. 27.8.2013.

11. In view of the above fact, out of the amount of ₹ 1,30,000/- as due in the execution petition, the petitioner is directed to deposit an amount of Rs. 52,000/- in the trial court and pay a sum of ₹ 78,000/- to respondents towards rent and maintenance. The said amount be deposited on or before the 31.12.2016 and also be paid to the respondents by the said date. On doing so, the matter to be reexamined by the court below and the case be heard after giving adequate opportunity of hearing to the petitioner herein. In case the respondents are held entitled to the sum already determined by the order dated 22.8.2009, the amount so deposited in the trial court to stand released to the respondents. Needless to say that in case of non compliance of the orders so passed this Criminal Miscallaneous Petition shall stand dismissed. It is also expected that the trial court will decide the case on remand as expeditiously as possible, preferably within two months of payment / deposit made by the petitioner in terms of this order.

12. Therefore, the instant petition is allowed. The impugned orders are hereby set aside and the matter is remanded back to the trial Court to re-assess the amount of maintenance/rent to be paid to the respondents herein subject to the above conditions.

25.10.2016

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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No.