

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M No. 41717 of 2015

Date of decision : August 10, 2016

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Gurmail Singh

.....Petitioner

Versus

Simarjit Kaur

.....Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Jasmail Singh Brar, Advocate for the petitioner.

Mr. C.M Munjal, Advocate for the respondent.

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RITU BAHRI, J.

The petitioner is seeking direction for quashing of order dated 15.10.2015 (Annexure P-2) by which the Executing Court has dismissed the objections filed by the petitioner and has ordered to pay maintenance from the date of filing of the petition.

As per the judgment dated 31.7.2013 passed by the Additional Chief Judicial Magistrate, Sri Muktsar Sahib (Annexure P-1), the respondent was directed to pay a sum of Rs.6000/- per month as maintenance, Rs.3500/- for accommodation and Rs.10,000/- as litigation expenses.

In execution, the decreeholder claimed the maintenance amount

awarded by judgment dated 31.7.2013 w.e.f the date of institution of application i.e 31.5.2010. The objection of the judgment debtor was that the maintenance awarded vide order dated 31.7.2013 passed by the Additional Chief Judicial Magistrate, Sri Muktsar Sahib i.e Rs.9500/- per month is to be paid w.e.f 29.11.2011 i.e the date when the Additional Sessions Judge, Sri Muktsar Sahib had decided the appeal regarding interim maintenance. This objection was dismissed by the Executing Court vide its judgment dated 15.10.2015, whereby it has been interpreted that the order dated 29.11.2011 passed by the Additional Sessions Judge, Sri Muktsar Sahib will merge with the main order of maintenance dated 31.7.2013 passed by the Additional Chief Judicial Magistrate, Sri Muktsar Sahib and the respondent will be held entitled for the maintenance from the date of filing the petition till the disposal of the petition i.e 31.7.2013. Hence the revision against the impugned order has been filed.

Heard counsel for the parties. Order passed by the Executing Court needs to be modified. The respondent had challenged the order dated 18.11.2010 passed by the Judicial Magistrate First Class, whereby her application for grant of interim maintenance had been dismissed. On appeal the Additional Sessions Judge, Sri Muktsar Sahib had allowed her application for grant of interim maintenance taking the carry home salary of the husband of the respondent as Rs.13932/- and had awarded maintenance of Rs.3000/- to the wife and Rs.2000/- to the minor child. It was clarified from this order that the maintenance will be paid from the date of the petition till the decision of this appeal. Hence the order of maintenance of Rs.5000/- per month was to be paid w.e.f from the date of application i.e

main application was disposed of on 31.7.2013 (Annexure P-1). The maintenance including accommodation was given at Rs.9500/- per month. However, in the order no date for giving the maintenance was mentioned. The question for consideration before this Court is whether maintenance has to be given w.e.f from the date of application i.e 31.5.2010 or from 29.11.2011. In the absence of any date being given, reference can be made to Section 125 (2) Cr.P.C which is reproduced hereunder:

Section 125(2) Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

The provisions of sub-clause are abundantly clear that the maintenance has to be awarded from the date of the order or, if ordered, from the date of application. In the present case, vide order dated 29.11.2011, maintenance was awarded from the date of the petition till the decision of the appeal. However, as per the order dated 31.7.2013 (Annexure P-1), the interim maintenance was enhanced to Rs.9500/- per month. Since no date for awarding of this maintenance is given and the earlier maintenance had been awarded only till the date of the appeal, the necessary conclusion would be that this maintenance awarded by order dated 31.7.2013 (Annexure P-1) has to be given to the respondent w.e.f 31.5.2010. Order dated 29.11.2011 has attained finality and the respondent can claim maintenance from the date of the application i.e 31.5.2010 till

dated 31.7.2013 (Annexure P-1) is to be given within a period of two months of receipt of a certified copy of this order. The order of the Executing Court is modified to this extent.

Partly allowed.

August 10, 2016
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No