

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

CRM-M-43785-2015 (O&M)

Date of Decision : 21.12.2016

Ritu Rani

.....Petitioner

Versus

Amrish Kumar and Others

.....Respondents

Present : Mr. A.G.S, Dhillon, Advocate,
for the petitioner.

Mr. K.S. Sodhi, Advocate ,
for the respondent-1-amicus curiae.

Mr. Ankur Sharma, Advocate
for respondent No. 1.

Mr. Naveen Sharma, Advocate
for respondent No. 2 and 3.

JAISHREE THAKUR, J.

1. Challenge in the present petition is to the order dated 03.08.2015 passed by learned Addl. Sessions Judge, Patiala dismissing the application of the petitioner for enhancement of maintenance.

2. In brief, facts of the case are that the petitioner herein filed an application under Section 23 of the Protection of Women from Domestic Violence Act, 2005 for grant of interim maintenance, residence orders, and protection orders etc. Learned Chief Judicial Magistrate, Patiala vide his order dated 27.10.2014 held the petitioner entitled for residence in the shared house and also allowed the petitioner maintenance of Rs. 4,000/- per month.

3. Aggrieved against the said order, the petitioner filed a revision petition before learned Addl. Sessions Judge, Patiala for enhancement of

interim maintenance amount which petition was dismissed. Aggrieved against the said order of the dismissal, the instant petition has been filed.

4. Learned counsel appearing on behalf of the petitioner submits that the meager amount of Rs. 4,000/- is not sufficient to survive upon and that the learned Lower Courts failed to appreciate the evidence brought on the record that the father of the husband of the petitioner is owner of the property worth crores. It is further argued that recently the parents of the husband of the petitioner sold their ancestral property situated at village Bambay Majra, Tehsil and District Fatehgarh Sahib for a total amount of Rs. 9,55,55,000/- on 18.01.2012 and another ancestral property for a sum of Rs. 1,59,25,833/- on 31.01.2012. It is further submitted that in a reply that was filed to the application filed under the Domestic Violence Act, the parents of the husband of the petitioner i.e. Respondent Nos. 2 and 3 had admitted that they had given a share to respondent No.1 from the ancestral property and as such being the legal wedded wife of the respondent, she is entitled to be maintained in a proper fashion.

5. Counsel for the respondent herein argued that there is nothing on the record to show that the respondent herein is a man of means but on the other hand, it is pleaded that he is working as a Driver in Angels Public School, Pasiona and is getting Rs. 4,000/- per month as a salary whereas the petitioner is earning Rs. 10,000/- to 12,000/- per month by giving tuition to the children in the locality.

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

7. The claim herein is seeking enhancement from Rs. 4,000/- as interim monthly maintenance from respondent No.1 husband. It is argued that as the relationship between the parties is not in dispute and on that basis it becomes the duty of the husband to maintain his wife.

8. There is no doubt that the wife is to be maintained by the husband in case she is unable to do so herself, but it is an obligation that is personal to the husband . The question of respondent Nos. 2 & 3 (in-laws of the petitioner) to pay maintenance as claimed by the petitioner would only arise in case the husband is deceased. The Hon'ble Supreme Court in ***Vimalben Ajitbhai Patel Vs. Vatslabeen Ashokbhai Patel and others*** reported as ***2008(2) R.C.R. (Criminal) 699*** held that it was an obligation of the husband to maintain his wife and it is a personal obligation, whereas the obligation of the in-laws to maintain the daughter-in-law would only arise in case the husband has died and that too such obligation can be meted from the properties of which the husband would have been a co-sharer and not otherwise. The right of a daughter-in-law to residence would be maintained under the Domestic Violence Act would follow in case the husband has a share in the said property. The Hon'ble Supreme Court further held that such daughter-in-law would not be able to claim right of residence in the property belonging to her mother-in-law. Therefore, there can be no infirmity in the order passed by the Courts below wherein it has been held that it is the duty of the husband-respondent No.1 herein to maintain his wife.

9. As regards the claim for enhancement of the maintenance that has been awarded, there is a reply that has been filed by respondent Nos. 2

& 3 in which they have submitted that their son has got his share in the property. Two sale deeds have been placed on the record showing that land worth almost 11 crores have been sold and as per the reply filed on behalf of respondent Nos. 2 & 3, respondent No.1 has received his share in the ancestral property. If that is the situation, the petitioner herein would certainly be entitled to an increase of the maintenance amount that has been fixed at Rs. 4,000/- per month. In these days even a daily wager is capable of earning Rs. 10,000/- to Rs. 12,000/- per month and coupled with the amount received from the ancestral property which was sold for Rs. 11 crores , the interim maintenance granted @ Rs. 4,000/- per month is on the lower side, it is hereby increased to Rs. 6,000/- per month.

9. Consequently, the petition stands disposed of.

21.12.2016
SP

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No