IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revision No.(F)-121 of 2015(O&M)
Date of Decision: 09.09.2016
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Pardeep Joshi
.. Petitioner

Vs.

Sareena Joshi & Anr.
.. Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: - Mr. Ramneek Vasudeva, Advocate for the petitioner.

Mr. A.S. Gill, Advocate for the respondents.

ANITA CHAUDHRY, J.

The petitioner-husband is questioning the legality and propriety of order dated 22.04.2015 vide which he has been directed to pay Rs.5000/- to petitioner No.1 and Rs.3000/- to petitioner No.2 as interim maintenance.

The facts leading to the institution of the present revision petition are noticed first.

Respondents filed a petition under Section 125 Cr.P.C. seeking maintenance from the petitioner-husband on the ground that their marriage took place on 12.11.2009. Aradhya was born on 15.11.2012, but the latter deserted them without any reasonable cause and both of them are unable to maintain themselves, whereas the husband was a man of means.

The petitioner-husband denied the allegations and claimed that the wife had deserted him and always ignored the responsibilities of a wife.

The Court below fixed the interim maintenance, as noticed above vide order dated 22.04.2015, which has been impugned in the instant revision petition.

Vide order dated 27.05.2015 recovery of amount of interim maintenance beyond Rs.6000/- per month was stayed subject to the petitioner's depositing all the arrears. It was pointed out that an amount of Rs.1,08,000/- was deposited by the petitioner on 20.07.2015 and a demand draft of Rs.12000/- was given to the counsel for the respondents on 24.09.2015.

The marriage between the parties, existence of a child and their separation is not in dispute. The contention of learned counsel for the petitioner is that the sole basis for fixing the interim maintenance to the wife and the child was the Income Tax Return for the assessment year 2014-15, which was produced by the petitioner himself in which his gross income was shown as Rs.1,21,500/-. According to him, the monthly salary of the petitioner comes to Rs.10,125/- and it is mentioned in the impugned order itself that the petitioner has to look after his aged and ailing mother also. He had further submitted that the wife had not led any evidence and she is avoiding the witness box.

It would be a matter of evidence whether the petitioner had deserted the wife and child or it is the respondent wife who had left the company of the husband without a reasonable excuse. There is a force in the contention of learned counsel for the petitioner. Prima facie, the income of the petitioner has been shown as little more than Rs.10,000/- per month. After paying the maintenance amount of Rs.8000/-, the petitioner would be left with just a small amount. Except the ITR on record, no document was produced by the respondents to show that the husband had any other source of income. The respondents is yet to lead evidence concerning the income of the petitioner and that would be considered by the Court below at the time of passing final orders. Keeping in view the document available on record regarding income of the petitioner, the amount of interim maintenance allowed is certainly on the higher side.

In view of the above, the impugned order dated 22.04.2015 is modified and the amount of interim maintenance is reduced to Rs.6000/- per month i.e. Rs.4000/- to the wife and Rs.2000/- to the child, payable from the date of filing of the application. The amount already paid by the petitioner shall be adjusted from the amount due towards interim maintenance and if there are arrears, the same shall be cleared within a period of two months. If any amount has been paid in excess by the petitioner, the same shall be adjusted in the future amount.

With these modifications, the instant revision petition stands disposed of. Whatever has been stated here-in-above is without prejudice to the case of the parties on merits.

September 09, 2016 **(ANITA CHAUDHRY)**
Jiten **JUDGE**

Whether speaking/ reasoned Yes/ No

Whether reportable Yes/ No