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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.REV.P. 447/2016

PANKAJ PANDEY

..... Petitioner

Through : Mr. Madan Lal Kalkal, Adv.

versus

DEEPTI & ANR.

..... Respondents

Through : Mr. Pramod Tyagi, Adv.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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09.11.2016

CRL.REV.P. No. 447/2016, Crl. M.A. Nos. 10091/2016 & 14465/2016

Vide ex-parte judgment dated 2nd March, 2016 Principal Judge, Family Court, Shahdara, Karkardooma, Delhi has disposed of the petition under Section 125 of the Cr.P.C. of the respondents; whereby maintenance @ ₹3,000/- per month to the respondent no. 1 and ₹2,500/- per month to the respondent no. 2 has been awarded.

Respondent no. 1 and respondent no. 2 are the wife and child respectively, of the petitioner. Respondents alleged in the petition that petitioner was working as a Supervisor in a limited company in Noida (UP) and earning ₹25,000/-. Respondent no.1 claimed that she was unemployed

and had no source of income. In absence of any cogent evidence Family Court has not believed statement of respondent no.1 that petitioner was earning ₹25,000/-. Oral statement of respondent no.1, in this regard, has not been found convincing in absence of any documentary evidence on record.

It is noted that petitioner had participated in the proceedings under Section 125 of the Cr.P.C. but did not file any reply to the petition, inasmuch as stopped appearing subsequently and was proceeded against ex-parte on 31st August, 2015. Learned counsel for the petitioner has vehemently contended that petition under Section 125 of the Cr.P.C. was earlier tried by the learned Metropolitan Magistrate, Delhi along with another case filed by the respondent no. 1 against the petitioner under the Domestic Violence Act. During the said proceedings talks of settlement took place, inasmuch as matter was virtually settled between the parties, which fact is evident from a perusal of order dated 13th May, 2013 of the learned Metropolitan Magistrate, Delhi. Respondent no. 1 had assured the petitioner that she will withdraw the petition, therefore, petitioner did not appear before the Principal Judge, Family Courts, upon transfer of the case to the said court. However, this plea of the petitioner is not found supported by the proceeding-sheets placed on record by the respondent no. 1, which

shows that petitioner did appear before the Principal Judge, Family Court on 7th June, 2014, when the case was fixed for 23rd February, 2015 for cross-examination of the respondent no. 1. Petitioner did not appear before the Family Court on 23rd February, 2015, 25th May, 2015 and 31st August, 2015; consequently, he was proceeded against ex-parte on 31st August, 2015.

In my view, petitioner has failed to explain his non-appearance before the Family Court on 31st August, 2015. Accordingly, I do not find any justification to set aside the ex-parte judgment dated 2nd March, 2016 passed by the Principal Judge, Family Court.

In my view, Family Court has rightly taken the income of petitioner to be ₹11,000/-, that is, equivalent to the wages of a “skilled worker” under the Minimum Wages Act, as prescribed by the Government while fixing the maintenance of ₹3,000/- to respondent no.1 and ₹2,500/- to respondent no.2. I do not find any illegality or procedural irregularity in the impugned judgment.

Learned counsel for the petitioner has pointed out that respondents were also awarded maintenance @ ₹1,600/- each, totalling to ₹3,200/- by the concerned Metropolitan Magistrate, Delhi in the petition of respondent no. 1 under the Domestic Violence Act. Needless to add that amounts paid in the

said proceedings shall be given adjustment of, while enforcing the ex-parte judgment.

Learned counsel for the petitioner has further contended that petitioner has met with an accident on 4th November, 2016 and his left arm and left leg have been amputated and petitioner is still in hospital presently. He is not earning any money, thus, the maintenance order is liable to be altered, withdrawn and cancelled with effect from November, 2016. In my opinion, remedy under Section 127 of the Cr.P.C. is available to the petitioner before the trial court. Petitioner may approach the trial court for appropriate orders by invoking the said provision.

Petition is disposed of in the above terms. Miscellaneous applications are disposed of as infructuous.

Amount lying deposited in this Court along with interest accrued thereon, if any, be released to the respondents through respondent no.1.

A.K. PATHAK, J.

NOVEMBER 09, 2016

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