

\$~9

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

+ CRL.M.C. 5099/2013

KANIKA SETHI VERMA Petitioner
Represented by: Mr.V.K.Ohri, Advocate

versus

STATE & ANR Respondents
Represented by: Mr.Akshai Malik, APP for the State
Mr.Sudhir Balyan, Advocate for R-2

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

ORDER
% **15.09.2016**

1. The petitioner, Kanika Sethi Verma has filed above captioned seeking the quashing of the order dated September 16, 2013 passed by the learned Additional Sessions Judge-II, South District, Saket Courts, New Delhi who confirmed the order dated February 19, 2013 passed by the learned Metropolitan Magistrate South, Saket Courts, New Delhi whereby the applications filed by the petitioner for maintenance under Section 12 of the Protection of Women from Domestic Violence Act, 2005 were dismissed.

2. On an application filed under Section 24 of the Hindu Marriage Act, 1955 in Case No. 968 DJ/FC/2010, which was a petition filed by respondent No.02 : Himanshu Verma under Section 13(1)(IA) of the Hindu Marriage

Act, 1955 for the dissolution of marriage between the petitioner and respondent No.2, the petitioner had been granted interim maintenance in the sum of ₹20,000/- (Rupees Twenty Thousand only) per month from the date of filing of the application till the date of decision in the main petition along with ₹5,500/- (Rupees Five Thousand Five Hundred only) as litigation expenses vide order dated February 03, 2011 by the learned ADJ, Family Court, Gurgaon. The maintenance awarded to the petitioner vide order dated February 03, 2011 was enhanced to ₹40,000/- (Rupees Forty Thousand only) per month by the High Court of Punjab & Haryana vide order dated January 09, 2012, out of which a sum of ₹10,000/- (Rupees Ten Thousand only) was to be deposited by the petitioner every month in a bank in FDR in the name of the minor daughter of the petitioner and respondent No.2.

3. The petitioner filed two applications in the court of the learned Metropolitan Magistrate South, Saket Courts, New Delhi, whereby vide the first application under Section 12 of the Protection of Women Act, 2005, she sought provision of separate residence by respondent No.2 or payment of expenditure for separate residence and vide the second application the petitioner sought a sum of ₹5,500/- (Rupees Five Thousand Five Hundred only) per month for the school fees of the minor daughter as well as a sum of ₹28,750/- (Rupees Twenty Eight Thousand Seven Hundred Fifty only) for admissions expenses.

4. In said proceedings petitioner pleaded that she had been residing with her parents and her brother in her parents' two bedroom flat because she did not have any separate accommodation. It was pleaded by her that her brother was of marriageable age and his marriage prospects were being adversely affected due to lack of space in her parents' house, as a

consequence, she had no option but to shift out and find separate accommodation. In addition, it was pleaded by her that the salary of respondent No.2 had increased from ₹1,68,000/- (Rupees One Lacs Sixty Eight Thousand only) per month to ₹2,36,000/- (Rupees Two Lacs Thirty Six Thousand only) per month and therefore the petitioner was entitled to receive additional maintenance towards education expenses of the minor daughter of the parties.

5. The claims of the petitioner were denied by respondent No.2 who, claimed to have the liability of maintaining his unemployed parents and his unmarried sister.

6. The learned Metropolitan Magistrate in her order dated February 19, 2013 has recorded that the High Court of Punjab & Haryana had assessed the salary of the respondent No.2 at ₹1,68,000/- (Rupees One Lacs Sixty Eight Thousand only) per month and that the High Court of Punjab & Haryana, while granting maintenance in sum of ₹40,000/- (Rupees Forty Thousand only) to the petitioner, vide order dated January 09, 2012, must have included within the ambit of the sum award provision for food, clothing, residence, education and medical expenses, since only then could the sum award be sufficient for maintaining the lifestyle of the petitioner at the same level as she was accustomed to before her separation. Accordingly, the learned Metropolitan Magistrate has held that the maintenance was sufficient to meet the education expenses of the minor daughter of the parties as well as expenses towards separate accommodation. The Metropolitan Magistrate also held that any application for alteration of the maintenance awarded on account of change in circumstances could only be filed by the petitioner in the Court which had originally granted

maintenance, that is the Court of the learned ADJ, Gurgaon.

7. Relying on the definition of Maintenance under Section 3(b) of the Hindu Adoption and Maintenance Act, 1956 as well as the judgment of the Bombay High Court reported as 80 Bom. LR 384 Shanta Wadhwa Vs. Purshottam and judgment of the Kerala High Court reported as AIR 1985 Kerala 20 Thulasi Kumar Vs. Raghvan Nair, the learned ASJ vide order dated September 16, 2013 confirmed the finding of the Metropolitan Magistrate that the maintenance awarded by the High Court of Punjab & Haryana vide order dated January 09, 2012 included within its ambit provision for shelter. Further, relying on the judgment of the Gujarat High Court reported as AIR 2000 Gujarat 272 Merubhai Mandenbhai Odedara v. Rani Ben Merubhai Odedara, the learned ASJ has held that it was not open to the petitioner to claim maintenance under provisions of the Protection of Women from Domestic Violence Act, 2005, when maintenance under the Hindu Marriage Act, 1955 was already being paid to her. The learned ASJ also confirmed the finding of the learned Metropolitan Magistrate that the Court of learned ADJ, Gurgaon was the proper forum for an application for enhancement of the interim maintenance on the ground of change in circumstances.

8. The view taken by both Courts is incorrect for the reason a right under the Protection of Women from Domestic Violence Act, 2005 is an independent right. Of course while awarding maintenance under said Act, any maintenance awarded either under Section 125 Cr.P.C. or under Section 24 of the Hindu Marriage Act has to be factored in.

9. Having perused the orders passed by the learned ASJ in Gurgaon and the order passed by the Punjab & Haryana High Court I do not find any

factoring in of the rent which the petitioner had to pay. The reason is obvious. At that stage the petitioner was staying with her parents. Her claim in the proceedings under Protection of Women from Domestic Violence Act, 2005 was on account of two factors. Firstly the increase in the cost of living and earning of her husband and secondly her brother being of marriageable age and this being her compulsion to move out of her parental house. The learned Metropolitan Magistrate has erred in not exercising jurisdiction vested in law and the learned ASJ has erred in not correcting the error.

10. The petition is disposed of quashing the order dated February 19, 2013 passed by the learned Metropolitan Magistrate as also the order dated September 16, 2013 passed by the learned ASJ-II, South District, Saket Courts, New Delhi. Proceedings before the learned Metropolitan Magistrate, South, Saket Courts, initiated by the petitioner is revived for fresh adjudication.

PRADEEP NANDRAJOG, J.

SEPTEMBER 15, 2016

skb