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

+ CM(M) 879/2016 & C.M. Nos.32607-08/2016

SHOME NIKHIL DANANI

..... Petitioner

Through Ms.Geeta Luthra, Sr. Adv. with Mr.
Sanjay Abbot , Mr. Tanmaya Mehta,
Mr.Ankit Agarwal and Ms.Swati
Gupta, Advocates.

versus

TANYA BANON DANANI

..... Respondent

Through Ms. Vibha Dutta Makhija, Sr. Adv
with Mr. Madhav Khurana and Ms.
Forain, Advs.

+ CM(M) 880/2016 & C.M. Nos.32609-10/2016

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versus

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CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **06.09.2016**

CM(M) 879/2016 & C.M. Nos.32607-08/2016

The petitioner before this Court is the estranged husband. He is
aggrieved by the order dated 21.07.2016 vide which the learned

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Family Court Judge was of the view that the application seeking interim maintenance will be decided in the first instance; the objection of the petitioner/husband that the application seeking amendment in the written statement be decided first was declined.

Arguments have been heard.

What has come on record is that the parties i.e. the petitioner and the respondent wife had been married on 26.06.2014. The wife left the matrimonial home on 01.06.2015. They are living separately since then. In July, 2015, she had filed a substantive petition under Section 125 of the Cr.PC seeking maintenance. In that substantive petition on 09.11.2015, she had moved an application seeking interim maintenance. Written statement and reply to the application seeking interim maintenance are a part of the record.

Record shows that the application seeking interim maintenance had been filed in November, 2015. Reply to the said application had been filed by the petitioner on 07.01.2016. Written statement had also been filed on that date. The application seeking interim maintenance in which pleadings were complete and in view of the judgments of various Court reiterating the position that an application for interim maintenance must be decided within a time bound frame and preferably within an outer limit of 60 days is a submission which has complete force. The submission of the petitioner that this proposition is incorrect and for which reliance has been placed upon a judgment of a Bench of this Court in 213 (2014) DLT 343 Kohli One Housing and Development P. Ltd. Vs. C.S. Aggarwal holding that an application under Order 6 Rule 17 of the CPC has to be decided even

before order can be passed on application under Order 7 Rule 11 of the CPC would be wholly inapplicable to the factual matrix of the instant case. That was a recovery suit in which that proposition was made. The present is a matrimonial proceedings where it is the human relationships of the parties which are involved and not inanimate objects. Additional submission of the learned senior counsel for the petitioner that Section 125 (4) of the Cr.PC presupposes a situation that a person living in adultery cannot be granted the benefit of interim maintenance is an argument which will be gone into in the course of trial. Even otherwise, this would only be an interim maintenance. The substantive petition for which evidence is required is yet to be decided. It is noted that the application seeking amendment in the written statement is also alive. This is the admitted position.

The holding of the Trial Court that application for interim maintenance has to be decided in the first instance is an order which suffers from no infirmity. It was a fair exercise of its discretion. Petition is without any merit. Dismissed with costs quantified at Rs.10,000/-.

CM(M) 880/2016 & C.M. Nos.32609-10/2016

The petitioner husband is the estranged spouse. He is aggrieved by the order dated 01.09.2016 wherein his application seeking an amendment to his reply (which he had filed on the application of the wife seeking interim maintenance) had been declined. The submission of the learned senior counsel for the petitioner that under Section 125 (4) of the Cr.PC, a person who lives

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in adultery cannot be granted maintenance is noted.

Submission before this Court on this count is that although admittedly written statement had been filed by the petitioner in those proceedings (under Section 125 of the Cr.PC) in January, 2016 but the petitioner had also filed an application under Section 91 of the Indian Evidence Act pursuant to which the opinion of a reputed doctor had been obtained only in April, 2016 which had evidenced that the respondent-wife was suffering from a genital herpes and the petitioner husband being free from such a disease, the obvious presumption would be not the wife had contracted attracted this disease while she was living in adultery. Additional submission being that the incubation period for attracting this disease is between 2-12 days. Learned senior counsel for the petitioner submits that the record of the Leelawati Hospital was obtained on 25.05.2016 which had advanced her submission that the respondent wife was suffering from such an ailment; argument being reiterated that this is a clear case where the wife is living in adultery would not be entitled for any benefit in terms of Section 125 (4) of the Cr.PC.

The order before this Court (impugned) has noted that the Court had in its earlier order dated 21.07.2016 that the application seeking interim maintenance would be decided in the first instance and as such the submission of the petitioner that her application seeking an amendment to the reply filed by him to the application for interim maintenance be considered first was declined as a necessary corollary. This application seeking amendment in the reply was filed only on 29.08.2016 whereas pleadings in the application for interim

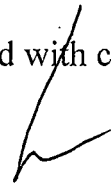
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maintenance had been completed much earlier. There is also no explanation for filing this application for amendment on 29.08.2016 when even as per the petitioner she had obtained the record from the Leelawati hospital in May, 2016. At the cost of repetition, order on an application for interim maintenance is only an interim order which can be varied at the time of final decision of the petition under Section 125 of the Cr.PC which admittedly would require evidence and is yet pending before the concerned Court.

This Court also notes that in the first written statement filed by the petitioner husband in the trial Court (January, 2016), there was never any averment that the wife was living in adultery. This Court also notes that this argument now being canvassed wholesomely is to deny the right of the wife to be heard on her application seeking interim maintenance under Section 125 of the Cr.PC as the submission of the respondent on this count is that the petitioner husband is time and again taking dates before the trial Court and is not allowing her case to proceed and on every occasion when the matter is ripe for final hearing, on one pretext or the other, a new application is filed to ward off the hearing.

This Court, in this background, is not inclined to interfere with this order which suffers from no infirmity.

Petition is without any merit. Dismissed with costs quantified at Rs.10,000/-.


INDERMEET KAUR, J

SEPTEMBER 06, 2016

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