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

+ **CRL.M.C. 3470/2016**

**HEMANT KUMAR**

..... Petitioner

Represented by: **Mr. Rajiv Kumar Jha, Adv.**

versus

**STATE (NCT OF DELHI)**

..... Respondent

Represented by: **Mr. Ravi Nayak, APP.**

**CORAM:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**ORDER**

**18.10.2016**

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**CrI.M.A. 16088/2016**

Exemption allowed subject to just exceptions.

**CrI.M.A. 16087/2016**

1. By this application the petitioner seeks clarification/ modification of the order dated 20<sup>th</sup> September, 2016 wherein this Court dismissed the petition filed by the petitioner seeking quashing of the order dated 29<sup>th</sup> April, 2015 and the execution proceedings pursuant to Execution Petition No.46/2015.

2. Contention of learned counsel for the petitioner is that this Court wrongly noted in its order dated 29<sup>th</sup> April, 2015 that the learned counsel for the petitioner failed to convince the Court in his arguments as to why the order dated 29<sup>th</sup> April, 2015 be set aside when the specific contention of learned counsel for the petitioner was that the respondent had not

approached the Trial Court with clean hands and hence deserved no relief. It is further contended that even if the petitioner failed to annex the copy of the petition under Section 340 Cr.P.C., the Court ought to have summoned the judicial record and come to a just conclusion.

3. This Court vide order dated 20<sup>th</sup> September, 2016 while dismissing the petition and application noted the number of petitions challenging the various orders filed by the petitioner as under:

“Crl.M.C. 3470/2016 & Crl.M.A. 14660/2016

1. A complaint being CC No. 331/2/14 was filed by the respondent under the Protection of Women from Domestic Violence Act (in short ‘the Act’) wherein vide order dated 29<sup>th</sup> April, 2015, learned Metropolitan Magistrate allowed the application of the respondent granting interim relief of maintenance under Section 23(2) of the Act. It was directed that the petitioner would pay interim maintenance of ₹6500/- per month to the complainant and ₹6500/- per month for child Kashvi from October, 2013 (the date of unemployment of complainant) till final disposal of the case. The petitioner was further directed to clear the arrears of maintenance within three months and make payment on the 5<sup>th</sup> day of each month by depositing the same directly in the bank account of the complainant.

2. Challenging the said order, the petitioner earlier filed a petition being Crl.M.C. No.2017 /2016 which he withdrew stating that he has already filed an application before the learned Trial Court on 3<sup>rd</sup> August, 2016.

3. In the present petition, the petitioner seeks stay of the execution proceedings in Execution Petition No.46/2015 pending before the learned Metropolitan Magistrate.

4. As per the order dated 8<sup>th</sup> August, 2016 passed by the learned Trial Court, the petitioner had filed application seeking modification of the order dated 27<sup>th</sup> February, 2016 and 3<sup>rd</sup> June, 2016. Vide order dated 27<sup>th</sup> February, 2016, the learned Metropolitan Magistrate allowed the application of the

*petitioner modifying the order dated 29<sup>th</sup> April, 2015 noted above with regard to clearing the arrears of maintenance till 30<sup>th</sup> October, 2015. Further modification was also granted on 3<sup>rd</sup> June, 2016. The application which came up before the Court on 8<sup>th</sup> August, 2016 sought further modification wherein the learned Trial Court noted that the petitioner was directed to clear the arrears of maintenance till the date of filing of the modification application i.e. 30<sup>th</sup> October, 2015 and now the petitioner was seeking review of the order dated 27<sup>th</sup> February, 2016 which was not legally permissible.*

*5. Before this Court, no arguments have been raised as to why this Court should set aside the order dated 29<sup>th</sup> April, 2015 which the petitioner had earlier challenged by way of Crl.M.C. No.2017/2016 and withdrew the same on 3<sup>rd</sup> August, 2016. The only contention raised is that an application under Section 340 Cr.P.C. has been filed by the petitioner along with bank details and income proof of the complainant. However, copy of the said application has not been placed before this Court and on the argument urged, this Court finds no reason to interfere with the impugned order and stay the execution proceedings.*

*6. Petition and application are dismissed.”*

4. Petitioner had earlier also withdrawn Crl.M.C.2017/2016 on 3<sup>rd</sup> August, 2016 wherein also challenge was to the order dated 29<sup>th</sup> April, 2015 passed by the learned Trial Court. The petitioner cannot be permitted to re-agitate the same issue again and again and it is apparent that in the garb of a prayer for modification of the order, the petitioner is seeking review of the order dated 20<sup>th</sup> September, 2016 which is not permissible.

5. Application is dismissed.

**MUKTA GUPTA, J.**

**OCTOBER 18, 2016**

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