

CRM -M-1035 of 2012(O&M)

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In the High Court of Punjab and Haryana at Chandigarh

CRM -M-1035 of 2012(O&M)

Date of Decision: 20.3.2017

Shivani (Minor) through her Maternal Grand father Ajit Raj

---Petitioner

versus

Kewal Krishan and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Vipin Mahajan, Advocate
for the petitioner
Mr. Viney Saini, Advocate
for Mr. G.S.Nagra, Advocate
for the respondent

Rekha Mittal, J.

The present petition directs challenge against order dated 2.6.2009 (Annexure P-8) passed by the Additional Chief Judicial Magistrate, Gurdaspur and dated 22.2.2011 (Annexure P-10) by the Additional Sessions Judge (Adhoc) Fast Track Court, Gurdaspur whereby application for execution of order dated 19.10.2000 (Annexure P-4) granting maintenance to Shivani under Section 125 of the Code of Criminal Procedure (in short "Cr.P.C.,") at the rate of Rs. 500/- per month has been dismissed and order passed by the Executing Court has been affirmed by the revisional court.

Counsel for the petitioner would submit that Meera for herself and the minor petitioner filed an application under Section 125 Cr.P.C. for grant of maintenance on 18.1.2000. Dispute between Meera, mother of the petitioner and Kewal Krishan her father was settled and in pursuance thereof, parents of the petitioner filed a joint petition under Section 13-B of

the Hindu Marriage Act, 1955 (in short “the Act”) for divorce by way of mutual consent. In the said proceedings, statement of Meera was recorded on 25.3.2000 (Annexure P-1) wherein she had stated that she had taken entire expenses of herself and her daughter to the extent of Rs. 1.25 lakhs. Later, the proceedings pending under Section 125 Cr.P.C. culminated in order dated 19.10.2000 (Annexure P-4) whereby claim of the petitioner was allowed and she was awarded maintenance at the rate of Rs. 500/- from the date of filing of the application.

The petitioner filed an application for execution of order dated 19.10.2000 that came to be dismissed by the Executing Court vide order impugned and further order has been affirmed by the revisional court. It is argued with vehemence that the Executing Court cannot go beyond the order passed by the trial court nor that order can be rendered infructuous till the same is set aside in appropriate proceedings. It is further submitted that orders passed by the courts below may be set aside, execution proceedings may be revived to enable the petitioner to recover arrears of maintenance.

Counsel for respondent No. 1 has submitted that as Meera, mother of the petitioner received an amount of Rs. 1.25 lakhs for herself as well as on behalf of the petitioner, reflected in her statement recorded on 25.3.2000 in proceedings under Section 13-B of the Act, the petitioner is no longer entitled to get maintenance. It is further submitted that order dated 19.10.2000 allowing maintenance to the petitioner is an ex parte order and is the result of failure of mother of the petitioner to bring true facts to the notice of the court that mother has already received an amount of Rs. 1.25 lakhs on 25.3.2000. It is further argued that as mother of the minor has already received payment on behalf of the minor as well, order dated

19.10.2000 cannot be executed. Further, counsel for the respondent has apprised the Court that the respondent has filed an application for setting aside ex parte order dated 19.10.2000 and the same is pending adjudication before the court below.

I have heard counsel for the parties, perused the paper book particularly the orders impugned.

The Additional Chief Judicial Magistrate, Gurdaspur (Executing Court) has dismissed the execution proceedings primarily on the ground that maintenance of the minor has been accepted by Smt. Meera, mother of minor Shivani, therefore, minor girl cannot claim maintenance. As per settled position in law, Executing Court cannot go beyond the order passed by the trial court. The Executing Court has not set aside the order passed by the trial court on any count whatever. Concededly, application filed by respondent No. 1 for setting aside order dated 19.10.2000 is pending disposal before the court below. Till the order allowing maintenance to the petitioner is set aside in appropriate proceedings, the petitioner is entitled to execute order dated 19.10.2000. In this view of the matter, the orders impugned cannot be allowed to sustain and accordingly set aside.

For the foregoing reasons, the petition is allowed. The impugned orders are set aside and the execution proceedings stand revived, to be proceeded with, in accordance with law.

(Rekha Mittal)
Judge

20.3.2017

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No