

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

-.-

CRR No.3780 of 2015 (O&M)

Date of decision: 09.05.2017

Ramesh and others

....Petitioners

versus

Suman and another

...Respondents

Coram: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vivek Khatri, Advocate
for the petitioners

Mr. Shalender Mohan, Advocate
for respondents

-.-

Rekha Mittal, J (Oral)

The present petition directs challenge against order dated 11.08.2015 passed by the Additional Sessions Judge, Hissar whereby though the appeal preferred by the petitioners against an ex parte judgment dated 17.03.2015 passed by the Judicial Magistrate Ist Class, Hansi has been allowed but still the appellate Court has directed the petitioners to pay Rs.5,000.00 per month towards interim maintenance to the respondents from the date of application with further direction to clear all the dues within three months from the date of order.

Counsel would urge that the order passed by the appellate Court awarding interim maintenance without providing an opportunity of hearing to the petitioners cannot be allowed to sustain and liable to be set aside. Another submission made by counsel is that dispute between the parties has been settled by way of compromise and in pursuance thereof, an

amount of Rs.12,00,000.00, to be paid by the petitioners to the respondents has been handed to the Mediator and the same shall be paid to the respondents subject to the terms and conditions of compromise.

Counsel for the respondents would state that he has no instructions with regard to any compromise between the parties but he has supported the impugned order with the submission that petitioner No. 1 being husband cannot escape his liability to provide adequate maintenance to the respondent-wife.

I have heard Counsel for the parties and perused the paper book particularly the order impugned.

The respondent-wife initiated the proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005 which culminated in an ex parte judgment dated 17.03.2015 whereby the respondents were allowed maintenance to the tune of Rs.5,000.00 per month, compensation of Rs.10,000.00 and the petitioners were directed to arrange a residential accommodation for the respondents or in the alternative to pay Rs.2,000.00 per month as rent. The appeal preferred by the petitioners against ex parte judgment dated 17.03.2015 was allowed primarily on the ground that there was no proper service of the petitioners, judgment dated 17.03.2015 is liable to be set aside but at the same time the Court of appeal allowed interim maintenance to the respondents at the rate of Rs.5,000.00 per month from the date of application with a direction to clear arrears within three months. Once the Court of appeal has held that the petitioners have not been duly served, therefore, need to be provided an opportunity of hearing and the matter requires adjudication afresh, the Court of appeal possibly could not assess any interim maintenance payable to the

respondents. The Court, at best, could issue a direction to the trial Court to decide the question of interim maintenance within a particular period of time so that the respondents do not suffer for want of maintenance. In this view of the matter, order passed by the Court of appeal either assessing interim maintenance or direction to the petitioners to pay interim maintenance within a stipulated period cannot be allowed to sustain and liable to be set aside.

For the foregoing reasons, the petition is allowed, order passed by the Court of appeal with regard to assessing interim maintenance or payment thereof is set aside. However, the petitioners shall be liable to pay litigation expenses to the respondents to the tune of Rs.30,000.00 qua the proceedings before the first appellate Court and this Court, to be paid within a period of one month by way of deposit before the trial Court. Failure of the petitioners to pay litigation expenses, ordered above would entail dismissal of the petition.

(Rekha Mittal)
Judge

09.05.2017
mohan bimbra

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No