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*** IN THE HIGH COURT OF DELHI AT NEW DELHI
DECIDED ON : 27th JANUARY, 2017**

+ CRL.M.C. 873/2016

JAYA MUKHERJEE Petitioner
Through : Ms.Ritika Mitra, Advocate.

versus

SIDDHARTHA MUKHERJEE Respondent
Through : Mr.Vikas Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (Oral)

1. Present petition under Article 227 of the Constitution of India read with Section 482 Cr.P.C. has been preferred by the petitioner to challenge the legality and correctness of an order dated 15.02.2016 of learned Metropolitan Magistrate in Execution Petition Nos.102/2012, 16/2014, 44/2014 & 71/2015. Petition is contested by the respondent.

2. I have heard the learned counsel for the parties and have examined the file. During the course of arguments, it revealed that order dated 08.09.2008 was passed by learned Metropolitan Magistrate in a complaint case under Section 12 of Protection of Women from Domestic Violence Act instituted by the petitioner against the respondent. The respondent was directed to pay interim maintenance @ ₹10,000/- per month to the petitioner from the date of filing of the petition. The amount of ₹10,000/- per month included ₹2,500/- per month to take care of her baby girl. The respondent did not comply with the order and various execution petitions were subsequently filed by the petitioner.

3. It appears that by an order dated 15.02.2016, the learned Executing Court came to the conclusion that the order dated 08.09.2008 was only towards grant of maintenance @ ₹10,000/- per month from the date of institution of the case till the passing of the said order. Accordingly, the Executing Court declined to grant any maintenance to the petitioner beyond 08.09.2008.

4. On the face of it, it can be inferred that the findings of learned Executing Court that the impugned order pertains to the period till the date of order and does not go beyond that cannot be sustained. Apparently, the maintenance awarded was to operate till the disposal of the main petition. It is true that in the order dated 08.09.2008 there is no specific mention about it.

5. The proper remedy before the petitioner in such a scenario is to seek necessary clarification from the Court concerned.

6. In view of the above, learned counsel for the petitioner seeks permission to withdraw the present petition with liberty to move the learned Trial Court to seek necessary clarification / review of the order.

7. The petition is dismissed as withdrawn with liberty prayed for. The petitioner will be within her right to move an application for seeking review / clarification of the order and the learned Trial Court shall pass the order on merits after hearing both the parties.

(S.P.GARG)
JUDGE

JANUARY 27, 2017 / tr