

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

% **Date of Decision: 21st March, 2017**

+ **1. CRL.REV.P. 153/2015 & Crl. M.A. 3729/2015**

AVINASH CHANDRA ARORA Petitioner

Through: Mr.Amarjeet Sahni, Adv. with
petitioner in person.

versus

ANITA ARORA & ANR Respondents

Through: Mr.Aditya Kala, Adv.

+ **2. CRL.REV.P. 250/2015 & Crl. M.A. 6485/2015**

ANITA ARORA & ANR Petitioners

Through: Mr.Aditya Kala, Adv.

versus

AVINASH CHANDER ARORA Respondent

Through: Mr.Amarjeet Sahni, Adv. with
respondent in person.

**CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA**

JUDGMENT

I.S. MEHTA, J.

1. The instant revision petitions under Sections 397 Cr.P.C. are preferred by the husband-Avinash Chandra Arora against his wife-

Anita Arora and his daughter-Kirti Arora and *vice versa* wherein the parties are aggrieved by the impugned order dated 29.01.2015 passed by the learned Additional Sessions Judge- 05, West District, Tis Hazari Courts, Delhi in C.A. No. 76/14. Further the husband-Avinash Chandra Arora has also assailed the order dated 25.08.2014 passed by the learned Metropolitan Magistrate Mahila Court, Tis Hazari Courts, Delhi in C.C. No. 60/1/2010.

2. The brief facts stated are that the wife-Anita Arora was turned out from the matrimonial house by the husband-Avinash Chandra Arora on 29.03.2009. Thereafter a complaint case under Section 12 of the Protection of Women from Domestic Violence Act, 2005 was filed on 05.03.2010 by the wife-Anita Arora and the daughter-Kirti Arora in the Court of Chief Metropolitan Magistrate, Delhi against the husband-Avinash Chandra Arora wherein the complainants sought financial maintenance as well as an alternate residential accommodation for themselves.
3. In the mean while the wife-Anita Arora moved an application under Section 23 of DV Act for interim maintenance on 25.07.2012 and the same was disposed of vide order dated 24.01.2013 stating therein that the pleadings have already been completed and six witnesses have been examined therefore, the matter will only be decided after leading of the evidences by both the parties.
4. Further, the wife-Anita Arora and the daughter-Kirti Arora preferred an appeal before the Court of ASJ/Special Judge, NDPS, West District, Delhi against the order dated 27.07.2013 and the learned ASJ disposed of the appeal vide order dated 13.05.2014

stating therein that grant of maintenance may not be possible as the challenge was only an interlocutory order.

5. Subsequently, the wife-Anita Arora and the daughter-Kirti Arora filed a criminal revision petition No. 438/2014 before this Court impugning the order dated 13.05.2014 and this Court by setting aside the impugned order directed the concerned trial Court to take up the interim maintenance application when moved by the wife-Anita Arora and the daughter-Kirti Arora for hearing and dispose it of expeditiously and preferably within a period of one month from that day.
6. Consequently, the wife-Anita Arora and the daughter-Kirti Arora while in pendency of the abovementioned complaint case under Section 12 of DV Act being C.C. No. 60/1/2010 filed an application under Section 23(2) of the DV Act on 04.08.2014 in the Court of Metropolitan Magistrate, Tis Hazari Courts, Delhi against the husband-Avinash Chandra Arora for interim maintenance.
7. It is pertinent to mention here that the husband-Avinash Chandra Arora did not prefer to file the reply to the said application under Section 23 of DV Act and therefore, the learned Metropolitan Magistrate after perusal of the material placed on record vide order dated 25.08.2014 declined the relief of Rs. 10,41,500/- as the same was already spent by the father of the complainant- wife-Anita Arora and directed the husband-Avinash Chandra Arora to pay a monthly sum of Rs. 5,000/- per month to the wife-Anita Arora from the date of the order till the final disposal of the petition which also includes the rental charges for the suitable accommodation as well and the

maintenance qua against the daughter-Kirti Arora was declined as she was working/earning.

8. Aggrieved by the said order dated 25.08.2014 passed in C.C. No. 60/1/2010 both the parties filled cross appeals under Section 29 of the Protection of Women from Domestic Violence Act, 2005 in the Court of the District & Sessions Judge, (West) Tis Hazari, Delhi. Consequently, the learned ASJ-05, West District, Tis Hazari Courts, Delhi vide impugned order dated 29.01.2015 dismissed the appeal of the husband-Avinash Chandra Arora for want of merit and partly allowed the appeal of the wife-Anita Arora and the daughter-Kirti Arora by setting aside the order dated 25.08.2014 and modifying it to the extent that the husband-Avinash Chandra Arora was directed to give maintenance to the wife-Anita Arora as granted by the learned trial Court and further the husband-Avinash Chandra Arora was also directed to pay rent of Rs. 8,500/- per month to the wife-Anita Arora from the date of passing of the interim order by the learned trial Court till the final disposal of the petition and dismissed the claim of maintenance for the daughter-Kirti Arora in the view of her being a major.

Hence the present revision petitions.

9. The learned counsel for the husband-Avinash Chandra Arora submits that the interim maintenance amounting to Rs.5,000/- has been awarded in favour of the wife-Anita Arora and as the daughter-Kirti Arora has now attained majority therefore, no amount of maintenance qua the daughter is admissible under the law. He further submits that the husband-Avinash Chandra Arora does not dispute the

amount of Rs.5,000/- qua against the wife-Anita Arora as maintenance, however, there is a dispute pertaining to rental accommodation granted by the learned trial Court amounting to Rs.8,500/- as the addresses shown in the affidavit, petition and in other proceedings are different, which denotes that the wife-Anita Arora is not residing at the rental accommodation and accordingly the wife-Anita Arora is not entitled to have maintenance for the rental accommodation. It is further submitted that the wife-Anita Arora is residing with her father therefore, the impugned order dated 29.01.2015 passed in criminal appeal No. 76/2014 as well as the order dated 25.08.2014 passed in C.C. No. 60/1/10 be quashed.

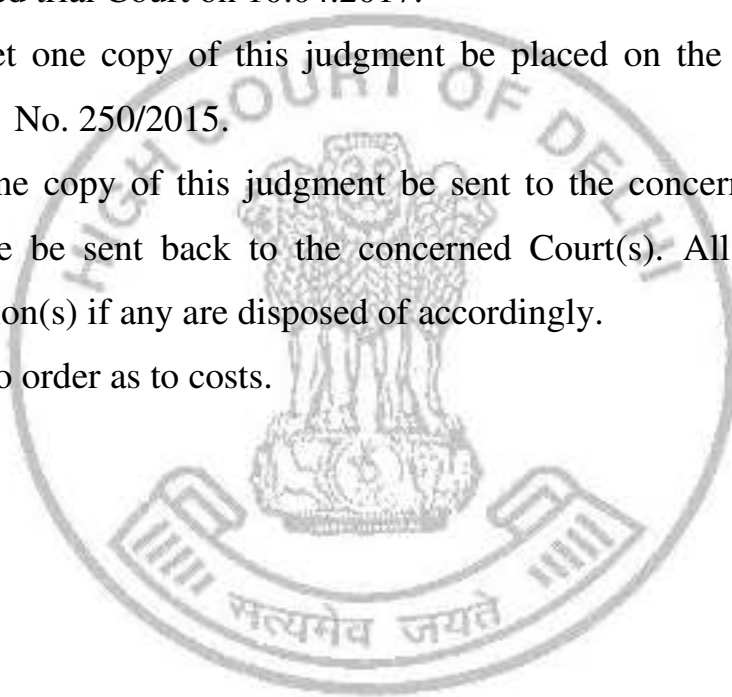
10. On the contrary the learned counsel for the wife-Anita Arora and the daughter-Kirti Arora submits that the dispute before this Court only pertains to the interim maintenance. He further submits that it is an admitted fact on record that the wife-Anita Arora and the daughter-Kirti Arora are not residing at the matrimonial house. He further submits that initially when the wife-Anita Arora was thrown out of the matrimonial home, at that point of time she was left with no other option but to join the house of her father. It is further submitted that as on date the rate of rent of the rental accommodation has increased to Rs.12,000/ per month. He further submits that when the wife-Anita Arora along with her daughter-Kirti Arora were thrown out of the matrimonial house, at that point of time the daughter was only 17 years old therefore, she is also entitled to get maintenance till she is married.

11. In the instant petitions, on bare perusal of the records it shows

that the pleadings before the trial Court are complete and the wife-Anita Arora has already examined ten witnesses and her evidence was closed vide order dated 04.05.2013. Further the husband-Avinash Chandra Arora has also lead his evidence and the matter is at fag end before the trial Court. Therefore, it is not proper at this stage to go into the merits of the evidence available on the record.

12. Since the learned counsel for the husband-Avinash Chandra Arora has submitted that the husband-Avinash Chandra Arora has got no objection to pay an amount of Rs. 5,000/- as interim maintenance towards the wife-Anita Arora.
13. Therefore, in the light of the above facts and circumstances the impugned order dated 29.01.2015 passed by the learned Additional Sessions Judge- 05, West District, Tis Hazari Courts, Delhi in C.A. No. 76/14 is modified to the extent that the husband-Avinash Chandra Arora is directed to pay an amount of Rs. 5,000/- as interim maintenance towards the wife-Anita Arora from the date of filing of the interim maintenance application under section 23 of DV Act, i.e. 04.08.2014.
14. The application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 being C.C. No. 60/1/2010 is pending disposal on merit before the learned trial Court. Therefore, the trial Court is directed to pass an appropriate order on merits on the application filed by the wife-Anita Arora and the daughter-Kirti Arora under Section 12 of the Protection of Women from Domestic Violence Act, 2005 dated 05.03.2010 within a period of six months from the date of passing of this judgment.

15. So far as the claim of maintenance on merits pertaining to rental accommodation, maintenance towards the daughter-Kirti Arora and other benefits are concerned the same requires proving of the facts and will be the subject matter of dispute before the trial Court which will be determined by the trial Court on merits.
16. Consequently, the present revision petitions are disposed of in the above terms and the parties are directed to appear before the concerned trial Court on 10.04.2017.
17. Let one copy of this judgment be placed on the file of CRL. REV. P. No. 250/2015.
18. One copy of this judgment be sent to the concerned Court(s). LCR file be sent back to the concerned Court(s). All the pending application(s) if any are disposed of accordingly.
- No order as to costs.



I.S.MEHTA, J

MARCH 21, 2017/km