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

+ CRL.M.C. 4105/2016 & Crl. M.A. 17144/2016 (stay)

KANWAL KISHROE GIRDHAR Petitioner
Through Petitioner in person.

versus

DR. SEEMA Respondent
Through Respondent in person.

CORAM:

HON'BLE MR. JUSTICE A.K. CHAWLA

ORDER

% **16.05.2017**

Heard.

On 2.12.2016, while issuing notice of the petition, the petitioner was directed to file the calculations for the payments made to the respondent, fortified by the bank statement. In that regard, the petitioner appearing in person adverts to the purported statement of account beginning from pages 37 onwards. This does not even bear signatures of anyone. These appear to be some kind of submissions before the Court of Ms. Anu Aggarwal, MM (West) and has come to be filed, as a statement of account. This set of papers cannot be said to be compliance of order dated 2.12.2016. It gets interesting to note that on 4.1.2017, this Court had reiterated for the directions given on 2.12.2016 and it is on that day only, these papers came to be filed by the petitioner. Be that as it may, such papers cannot be said to be compliance of the directions given on 2.12.2016.

Now, coming to the impugned order dated 20.5.2016, it is as follows :

“20.05.2016

**Present : DH in person with counsel.
 JD in person with counsel.**

Perusal of the case file shows that vide order dated 26.07.2010, the amount of maintenance of Rs.10,000/- was granted for each of both the children from the date of filing of the case and Rs.10,000/- was granted in favour of the DH towards the household expenses. As nothing is specified as regard the date from which the amount towards the household expenses become payable, it has to be calculated from the date of order.

Perusal of the execution petition shows that previous Nazir has calculated the execution amount of Rs.30,000/- per month from the date of the filing of the petition, which is wrongly calculated.

Nazir is directed to calculate the correct amount and report in pursuant of the above said observation.

Matter be pass over for one hour for report of Nazir.

**Sd/-
MM (Mahila Court-02)
West/THC : 20.05.2016**

Second Call

**Present : DH in person with counsel.
 JD in person with counsel.**

Nazir has given the report towards that the maintenance sought in the present petition as Rs.90,000/-. Ld. Counsel for JD had already filed one statement of account on behalf of JD. It is stated in the said statement of account that JD has paid the rent to the landlord Pankaj Kumar and Kapil Kumar of the premises where DH was residing. The said amount has been paid after the date of order and therefore, it should be adjusted in the present execution.

Perusal of the order dated shows that the complainant was not provided with the residence order.

The residence order in the form of rent was also declined. As such any payment of rental amount by the JD cannot be considered to be the payment in lieu of order dated 26.07.2010, particularly when complainant never consented that her maintenance amount be paid to the landlord in the form of rent.

In view of the same, rental amount even have to be paid by the JD can not be adjusted towards the present execution petition. Statement of DH is recorded wherein she has admitted that an amount of Rs.89,398/- has been paid by the JD towards school fees for the period 2009-2010. The said amount is to be adjusted towards present execution petition. Matter be listed for 23.05.2016.

Sd/-
MM (Mahila Court-02)
West/THC : 20.05.2016”

A bare reading of the impugned order would show that there is nothing adverse against the petitioner and during the course of hearing, the petitioner actually concedes so. When confronted with the situation, the petitioner submits that revision preferred against the said order was adversely decided and starts reading the submissions recorded in para 3 of the judgment dated 23.8.2016 passed by the ld. ASJ dismissing the revision against the impugned order dated 20.5.2016. Operative portion of the order of the ld. ASJ is as under:

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.....

5. Having heard the aforesaid rival submissions of both the sides and perusing the entire material by calling the Trial Court record, particularly the impugned order, contents of revision petition and the grounds taken therein, I have come to the considered opinion that here is no infirmity or illegality in the observation recorded by Ld. Trial Court in the impugned order dated 20.05.2016 and Ld. Trial Court while considering each and every aspect of the case has rightly declined to adjust the rental amount paid by revisionist/JD to the DH/respondent.

Admittedly, complainant was not provided with the order for residence in the form of rent and there is nothing on record to show that complainant had ever consented for the adjustment of maintenance amount with the amount paid to the landlord in the form of rent and in such circumstances Ld. Trial Court has rightly declined to make the adjustment as sought for.

6. In view of aforesaid I do not find any merits in the revision petition and as such same is hereby dismissed.”

Adverting to the above-said order also, the petitioner is at pains to point out what is adverse even in the judgment of ld. ASJ. Suffice to say it is only a matter of account, for what all payments came to be made by the petitioner in compliance of the order of maintenance etc. It is apparent that the petitioner has misused the process of law by filing the instant petition. Petition is wholly meritless and is dismissed with costs of Rs.10,000/-, which shall be deposited in the account of the respondent within 15 days, failing which the costs shall be double i.e. Rs.20,000/-.

A.K. CHAWLA, J

MAY 16, 2017/rc