

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

CRR-1851-2013

Date of decision:-12.9.2018

Sunita

...Petitioner

Versus

Mahesh Kumar and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.K.D. Sodhi, Advocate
for the petitioner.

Mr.J.S. Hooda, Advocate
for respondent No.1.

None for respondents No.2 to 5.

Mr.Neeraj Poswal, AAG, Haryana
for respondent No.6.

H.S. MADAAN, J.

Briefly stated, facts of the case are that applicant Ms.Sunita, aged about 35 years, estranged wife of Mahesh Kumar had filed an application under Sections 12 & 20 of the Protection of Women from Domestic Violence Act, 2005(43 of 2005) in which, she impleaded her husband - Mahesh Kumar, father-in-law Kishan Singh, mother-in-law Samoti, brothers-in-law Dinesh and Rakesh as respondents. She had moved an application seeking interim maintenance at the rate of Rs.15,000/- per month besides craving for a direction to respondents not to dispossess the applicant from the residential house.

Learned Judicial Magistrate Ist Class, Faridabad before whom the case was pending, after hearing the counsel for the parties and perusing the report filed by the Protection Officer under Section 12 to the effect that the applicant was subjected to domestic violence by respondents, who were threatening her to vacate the residential house and that respondents were denying maintenance and other necessities of life to the applicant and her children, directed respondent No.1 to pay a sum of Rs.5,000/- per month to applicant as interim maintenance. Further, learned JMJC, Faridabad restrained the respondents for dispossessing the applicant from residential house i.e. House No.508, Dabua Colony, Pali Road, Faridabad.

Feeling aggrieved by the said order dated 16.1.2013, the respondents had filed appeals to the Court of Sessions, which were assigned to learned Additional Sessions Judge, Faridabad.

Learned Additional Sessions Judge, Faridabad disposed of the appeals vide judgment dated 15.3.2013 observing that Sunita is wife of Mahesh Kumar, who is morally and socially responsible to maintain his wife and children, who are unable to maintain themselves, whereas the respondent Mahesh Kumar is a driver having monthly income of Rs.65,000/- as alleged by the applicant from his avocation of working as a driver as well as having rental income, therefore, a sum of Rs.5,000/- per month awarded as interim maintenance by the trial Court was not found required to be interfered with, keeping in view the fact that children of Sunita and Mahesh Kumar are living with their mother Sunita. With regard to right to reside in House No.508, Dabua Colony, Faridabad,

learned Additional Sessions Judge, Faridabad observed that the parties are yet to prove their respective versions by leading evidence. However, Sunita being wife of Mahesh Kumar is entitled to live in his house or to get the value of the rent in lieu of it. Considering all the facts and circumstances, the impugned order was set aside qua right of residence granted to the applicant and a sum of Rs.1,500/- were awarded to her in lieu of the same payable by respondent No.1 to 5 jointly.

Applicant Sunita felt dissatisfied with the said verdict given by learned Additional Sessions Judge, Faridabad and has filed the present revision, notice of which was issued to the respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record and I find that there is no merit in the revision petition.

Though the applicant had claimed that respondent by working as a driver is getting Rs.15,000/- per month and has got additional income of Rs.50,000/- per month total Rs.65,000/-, but she has not been able to establish this fact on record. However, Mahesh Kumar is an able bodied person, working as a driver, therefore, his monthly income from that avocation can certainly be taken to be more than Rs.10,000/- per month. His wife has been residing separately from him. Only during the trial it can be proved whether she is doing so for or without any reasonable cause. There is nothing on record to show that applicant is having any source of income or is able to maintain herself. The children of the parties are also residing with her. Therefore, she is certainly entitled to interim maintenance and rent for residential accommodation. The

maintenance awarded to her @ Rs.5,000/- per month is found to be adequate keeping in view the probable income of the respondent. During the trial, the applicant may be able to demonstrate that monthly income of respondent is much more or that he is a person of means having several properties but as the things stand, the interim maintenance granted @ Rs.5,000/- per month and Rs.1,500/- per month as rent is found to be just and adequate and the order passed by the learned Additional Sessions Judge in that regard does not call for any interference.

Therefore, criminal revision petition challenging that order cannot survive and is dismissed accordingly.

12.9.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No