

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 3695 of 2013 (O&M)

Date of decision : 10.8.2018

...

Rajesh Kumar

.....Petitioner

vs.

Rajesh

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Ajay Jain, Advocate
for the petitioner.

Mr. S.K. Yadav, Advocate for the respondent

Mr. Gaurav Bansal, Assistant Advocate General,
Haryana.

...

H. S. Madaan, J.

This revision petition is directed against order dated 1.10.2013, passed by Additional Sessions Judge, Narnaul, granting monthly maintenance allowance to Smt. Rajesh w/o Rajesh Kumar. Rajesh Kumar feeling aggrieved by the said order has filed the instant revision petition, praying that it be accepted, the impugned order be set aside and petition for grant of maintenance filed by his wife Smt. Rajesh, be dismissed.

Briefly stated, facts of the case are that petitioner – Smt Rajesh had filed a petition under Section 18, 19, 20, 22, 23 and 26 of the Protection of Women from Domestic Violence Act, 2006, against her husband Rajesh, which was contested by the latter. However, the Additional Civil Judge (Senior Division), Mahendergarh, vide order dated 5.2.2013, accepted the petition with the following observations:-

“Consequently, I hold that petitioner is unable to maintain herself while respondent has neglected and refused to maintain her and petitioner is entitled to grant of monetary order in the shape of maintenance allowance against the respondent. A perusal of jamabandi for the year 2007-08 Ex. P1 clearly goes to show that respondent Rajesh Kumar is coming as owner in possession to the extent of 1/8 share in the total land measuring 179 Kanal 19 Marla comprised in Khewat No. 314. Besides, RW 3 Rajesh Kumar, respondent has himself admitted in his cross examination that he is the owner of 3 killas of land and also does labour work. In such circumstances, it is reasonable to hold that respondent is at least earning a sum of Rs.1,00,000/- per annum from agricultural land and thereby monthly income of respondent is clearly shown to be in excess

of Rs.8,000/-. In view of the exorbitant increase in the prices of all essential commodities, I deem it appropriate to grant maintenance allowance at the rate of Rs.2,500/- per month to be paid by respondent to petitioner from the date of filing the present petition. Further respondent is hereby restrained from indulging any act of domestic violence against the petitioner at the shared household. Arrears of maintenance be paid within 30 days from pronouncement of order and future maintenance be paid by 7th day of each month in which it falls due. Copy of this order be given to the parties free of cost as per rules. Petition is disposed off accordingly. File be consigned to record room after due compliance.”

Feeling aggrieved, Rajesh Kumar had filed an appeal challenging that order. However, that appeal was dismissed by Additional Sessions Judge, Narnaul, vide judgment dated 1.10.2013, as such Rajesh Kumar has knocked at the door of this Court, by way of filing the present revision petition, notice of which was given to his wife, who had put in appearance.

I have heard, learned counsel for the petitioner, learned State counsel and learned counsel for the complainant-respondent, besides going through the record.

It has been the consistent case of the revisionist Rajesh Kumar that he got executed a release deed in favour of his minor sons, namely, Mohit and Sachin, from his father Shubh Ram regarding land measuring 45 kanals 13 marlas and mutation No. 7689 stood sanctioned in favour of the minors. The said parcel of land is being got cultivated by Smt. Rajesh and she is deriving income from there. She alongwith her minor children is residing in the room of the shared house. But that plea was not accepted by the Courts below and therefore, maintenance allowance was awarded to the wife and minor children of the revisionist.

During pendency of the revision petition, observing that there is a dispute with regard to possession of land measuring 45 Kanals 13 Marlas, which stand transferred in the name of minor children of revisionist and Smt. Rajesh, in as much as Smt. Rajesh stated that she is not in possession of the land, whereas version of the petitioner was that land has been given on lease by respondent herself, a direction was issued by this Court to the State counsel for Haryana to verify this fact from SHO concerned and submit a report in that regard. A respect has since been received, wherein it has been reported that an euqniry has been got conducted by the local police, which has revealed that the land has been given on rent to Satbir Singh s/o Chander Singh and Jai Singh s/o Jai Dayal, which is situated adjacent to the land of Rohtash ex sarpanch r/o Basai and that 22 kanals of land was given on rent to Satbir Singh s/o Chander Singh and rent amounting to Rs.35,750/- was paid to Smt. Rajesh Devi, which was till April 2018. Likewise, land measuring 30 kanals

was given on rent to Jai Singh s/o Jai Dayal r/o Basai and Rs.48,000/- was fixed as rent for that land till April 2018. Statement of lessees have been attached with the said report. It being so, the stand of the petitioner is found to be correct and that of respondent to be false. Such land having been given by father of the revisionist to minor sons of the parties, which is being managed by Smt. Rajesh by giving it on lease, it cannot be said that Smt. Rajesh and minor sons of the parties are not having any source of income and are unable to maintain themselves. The Courts below fell in error in ignoring this fact, while granting monthly maintenance allowance to Smt. Rajesh and two minor children, namely, Mohit and Sachin. The judgments are not sustainable. The revision petition has got merit and the same is accepted. The judgments passed by the courts below are set aside and petition under the Protection of Women from Domestic Violence Act, 2006, stands dismissed.

10.8.2018
chugh

(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No