

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

**CRM-31134-35-36-2018 in/and
CRR-475-2015 (O&M)**

Date of Decision: October 17, 2018

Deepesh Chandhok

...Petitioner

Versus

Tanisha

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Rajiv Sharma, Advocate
for the applicant-petitioner.

Dr. Payel Mehta, Advocate
for the respondent.

JAISHREE THAKUR, J. (Oral)

1. The petitioner herein seeks to challenge the impugned order dated 04.12.2014 passed by the Additional Sessions Judge, Gurgaon, whereby maintenance to the respondent has been fixed @ ₹30,000/- per month and has also allowed the respondent to stay in rental accommodation @ ₹ 25,000/- per month to be paid by the petitioner herein.

2. In brief, the facts of the case are that Tanisha-respondent herein solemnized the marriage with Deepesh Chandhok-petitioner herein on 11.12.2010. Thereafter a matrimonial dispute arose between the parties which resulted in complainant filing a complaint under Section 12 of the

Domestic Violence Act. Along with the said complaint, the complainant also sought interim maintenance as well as right of residence.

3. The Civil Judge, Junior Division, Gurgaon heard the parties on the quantum of interim maintenance and passed an order for interim maintenance to be paid to the applicant-respondent herein at ₹20,000/- per month. By an order dated 03.07.2012 she was also provided residential accommodation, rent of which was to be paid by the petitioner herein.

4. Aggrieved against the maintenance fixed, an application was filed for modification of the order, due to change of circumstances seeking enhancement of the maintenance. It was contended that the earlier order was passed on a consideration that the husband-Deepesh was unemployed, thereafter since his circumstances had changed and his financial condition had improved, enhancement of maintenance was sought. The order was modified to the extent that interim maintenance was enhanced @ ₹40,000/- per month maintaining the orders on rent of the accommodation.

5. Aggrieved against the order dated 01.11.2013, an appeal was filed before the Additional Sessions Judge, Gurgaon on the ground that the maintenance fixed by the trial court is on the higher side by taking into consideration the income tax returns filed. The Addl. Sessions Judge, Gurgaon held that if the appellant is to make ₹65,000/- per month as interim maintenance (i.e. ₹40,000/- as maintenance and ₹25,000/- towards rental accommodation), he would not have sufficient means to sustain himself. It is thereafter that the interim maintenance was reduced by ₹ 10,000/- per month clarifying that the interim maintenance to be paid by the appellant to the respondent would be ₹30,000/- per month, apart from bearing the cost of

rental accommodation. Aggrieved against the said order, the instant petition has been filed.

6. Mr. Rajiv Sharma, learned counsel for the petitioner contends that the amount of maintenance is still highly excessive while contending that the total salary of the petitioner is ₹85,000/- per month and after deduction of taxes etc., the carry-home salary of the petitioner is ₹78,000/- per month. It is also argued that the petitioner and his family members have been subjected to cruelty at the hands of the respondent with a result that the petitioner was forced to move out of the house and to start living with his parents. It is also argued that it is on account of the conduct of the complainant-respondent, the petitioner was forced to resign from his job on account of the fact that complainant created a scene in the office premises, as well as got warrants of arrest issued on the office of the company. It is contended that he remained jobless from 28.02.2015 and it is only subsequent thereto that he got a job with M/s Virtusa Consulting from 31.07.2017 and is working there till date. It is also urged that the respondent broke open all the locks of the flat No. 805, Ashoka Apartment, Sector 56, Gurgaon and forcibly occupied the afore-mentioned flat. It is also submitted that on this account, the mother of the petitioner also filed a petition bearing No. CRM-M-13988-2012 titled as Asha Chandok Vs. State of Haryana for taking action against the respondent as she had forcibly broken the lock of the house of petitioner's parents and occupied the same.

7. Learned counsel appearing on behalf of petitioner further contends that it is only the interim maintenance that has been decided as yet and it has to be still decided whether or not the respondent is entitled to any

maintenance under the Domestic Violence Act and whether she is an aggrieved party or not.

8. Per contra, Dr. Payel Mehta, learned counsel appearing on behalf of the respondent-complainant submits that the ITR returns of the petitioner herein would reflect that for the following financial years the income of the petitioner is as follows:-

Details of Income of petitioner as per his Form 26A made available.

Financial year	Income credited
2011-12	42,14,584/-
2012-13	4,94,650/-
2013-14	29,37,030/-
2014-15	11,66,775/-
2015-16	3,30,124/-
2016-17	1857/-
2017-18	5,04,469/-
Total amount:	96,49,489/-

It is further contended that the petitioner herein has paid a sum of ₹10,30,000/- to the respondent-complainant. It is also argued that as on date, the petitioner is in default of payment of the arrears of maintenance as he was supposed to pay ₹20,000/- from May 2012 to July 2013 and enhanced maintenance @ ₹40,000/- per month from July 2013 to December 2014 and ₹30000/- from December 2014 till May 2018, which comes to a total of ₹21,05,000/-. It is also contended that the petitioner has remained in a job right through, other than the period when he joined Indian School of Business for a period of one year and six months and even for this period, he would be liable to pay maintenance. It is further argued that the complainant would also be entitled to rent of the accommodation, which has been assessed as ₹25,000/- per month and if the period when she was

occupying the flat No. 805, Ashoka Apartment, Sector 56, Gurgaon is deducted, which stood vacated in April, 2017 and she would thereafter be entitled to claim rent. It is argued that the ITRs for the years mentioned above clearly establish that the petitioner herein has sufficient funds to pay the interim maintenance and the rent that has been assessed.

9. I have heard learned counsel for the parties and have also perused the pleadings of the case. There is no dispute to the fact that the marriage between the parties was solemnized, however, the same did not survive. The main case filed under the Domestic Violence Act is still pending consideration . The correctness of quantum of maintenance that has been assessed by the Courts below, is a subject matter of dispute before this court.

10. An arguments has been raised by learned counsel for the petitioner that the conduct of the complainant dis-entitles her for any maintenance as she has treated the petitioner and his family members with cruelty. This argument is not sustainable at the present moment as evidence is yet to be led in the main case . Form 26As are available on the record as well as the latest ITR . The income gets reflected as under:-

FORM 26	Amount	10% TDS deducted	Tax payable
2012-13	42,14,585/-	11,63,344/-	11,49,868
2013-14	4,94,650/-	1,31,957/-	30,349/-
2014-15	29,37,030/-	5,98,190/-	7,32,442/-
2015-16	11,66,805/-	68,484/-	1,80,293/-
2016-17	3,30,124/-	15,000/-	6,192/-
2017-18	1857/-	185/-	Nil
2018-19	5,04,469/-	21,893/-	13,796./-

Other than the two years when the income of the petitioner is reflected at ₹42,14,585/- for the assessment year 2012-13 and ₹29,37,030/- for the assessment year 2014-15, the income of the petitioner herein for the rest of the years does not exceed ₹11,66,805/-. In fact, for the assessment year 2013-14, there was a substantial drop in the income and his earning for this year is reflected as ₹4,94,650/-. The petitioner's income for the assessment year 2015-16 was ₹11,66,805/-, for the assessment year 2016-17 was ₹3,30,124/-, for the assessment year 2017-18 it was only ₹1857/- and for the assessment year 2018-19 was ₹5,04,469/- respectively.

11. The interim maintenance that has been awarded under the Domestic Violence Act to the respondent herein is ₹30,000/- per month, apart from paying ₹25,000/- as rent for residential accommodation. Merely because the petitioner was at one point of time earning handsomely i.e. for the assessment year 2012-13 as ₹42,14,585/-, it cannot be said that he continued to earn at the same rate. It is well settled that it is the moral duty and an obligation cast upon the husband to maintain his wife and maintenance has to be awarded keeping in mind the status of the parties and the capacity of an aggrieved person to pay the said amount. For example, if in the assessment year 2015-16 the petitioner's income as reflected is ₹11,66,805/- per annum, out of which the tax deducted would be ₹1,80,293/-, in net he would get approximately ₹9,86,521/- (without accounting for other statutory deductions) which in turn would amount to a take home salary of approximately ₹82,210/- per month. In this eventuality, if this is the average that he is earning, the amount of maintenance assessed

along with payment towards rental accommodation is highly excessive. Similarly, in other years when the petitioner's income as reflected is much lower, the interim maintenance amount assessed cannot be sustained. Currently the petitioner's income as reflected is ₹5,04,469/- per annum, on this basis the Court finds that the liability of making the payment of maintenance @ ₹30,000/- per month and rent @ ₹25,000/- per month is not justified.

12. The arguments have been raised that the petitioner was able to take a loan in the year 2016-17 for studying in Indian Business School and therefore, for those months he was still earning from other sources and therefore, he would still be liable to maintain the respondent wife. This argument does have merit and being an able bodied man he cannot be permitted to shirk his responsibility. In situations, when the income of a person cannot be proved, he is considered to be a daily wager, capable of earning approximately ₹10-11,000/- per month and taking that as an income, maintenance is assessed. When the petitioner's income for the assessment years 2016-17 and 2017-18 is reflected @ ₹3,30,124/- per annum and ₹1857/- per annum respectively, therefore, for that period the respondent herein would be entitled to get maintenance inclusive of the rent for residence @ ₹6,000/- per month.

13. While maintaining the maintenance as awarded , for the year 2012 to 2013 and for 2014-2015, at the rate of ₹30,000/- per month and rental @ ₹ 20,000/-, for the rest of the months, the maintenance is reduced to ₹20,000/- and ₹10,000/- towards rental to be paid from the time she vacated accommodation which was in her possession.

14. Before parting with this order, it is made clear that the final maintenance has to be settled on the basis of the evidence lead and any observations made herein or reduction on maintenance awarded would have no bearings on the final decision in proceedings under the Domestic Violence Act.

October 17, 2018
seema

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No