

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

CWP No.13895 of 2018
Date of Decision:29.05.2018

Manish Tandon

..... Petitioner

Vs.

Ankita Bhutani and another

..... Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Petitioner-in-person.

RAKESH KUMAR JAIN, J. (O&M)

The petitioner has prayed for quashing of the order dated 11.5.2018 passed by the Family Court, Sonipat dismissing his objection filed to the execution application of the order dated 9.8.2017 which has attained finality.

In brief, respondent No.1 filed an application under Section 125 of the Code of Criminal Procedure, 1973 [for short 'the Cr.P.C.'] against the petitioner for maintenance which was allowed by the Family Court, Sonipat on 09.08.2017 and direction was issued to the petitioner to pay a sum of ₹5,000/- per month to respondent No.1 w.e.f. 2.3.2013 and dismissed the application filed by the petitioner under Section 340 of the Cr.P.C. Aggrieved against the order dated 09.08.2017, the petitioner preferred CRR (F) No.440 of 2017 before this Court which was dismissed vide order dated 31.10.2017 categorically observing that the interim order dated 10.5.2016 by which the maintenance application was dismissed has no bearing on the order dated 09.08.2017 because it was passed at the initial stage when the parties were yet to lead their evidence but the order dated

09.08.2017 has been passed after taking into consideration the evidence brought on record. It was also observed that the finding recorded by the Family Court in the order dated 09.08.2017 is based on correct appreciation of facts and evidence and no fault can be found with its approach. It is also observed that the application filed by the petitioner under Section 340 of the Cr.P.C. was rightly dismissed by the Family Court. Besides this, this Court has further observed that the amount of ₹5000/- per month is not on a higher side, especially in the present scenario of high rise in the cost of living. Ultimately, it was observed that there is no illegality or perversity in the order dated 09.08.2017.

Although, the petitioner has not mentioned in the writ petition that he had challenged the order dated 31.10.2017 passed by this Court, upholding the order dated 9.8.2017, before the Apex Court but during the course of hearing, he has admitted that the SLP filed against the order dated 31.10.2017 has also been dismissed. Hence, the issue regarding the validity of the order dated 9.8.2017 by which the petitioner has been directed to pay ₹5000/- per month as maintenance to respondent No.1 w.e.f. 2.3.2013 came to an end with no further possible challenge.

Respondent No.1 filed the execution application on 14.8.2017, after the order was passed on 09.08.2017 to which the petitioner filed the objections raising the issue of fraud having been played upon the Court by respondent No.1 while obtaining the order dated 09.08.2017. The objections have been dismissed by the Family Court vide impugned order dated 11.5.2018 dealing with the issues raised by the petitioner of fraud and limitation.

The petitioner has argued that the order dated 9.8.2017 has been

regard has relied upon a decision of the Supreme Court rendered in the case of *“Hamza Haji Vs. State of Kerala and another”* (2006) 7 Supreme Court Cases 416. He has further submitted that the execution application is not maintainable because the limitation of one year is provided under Section 125(3) of the Cr.P.C.

I have heard the petitioner, who is appearing in person, in detail and perused the record.

The petitioner has raised two issues, firstly, that the order dated 9.8.2017 has been obtained by respondent No.1 by playing fraud upon the Court and has relied upon a decision of the Supreme Court in the case of *Hamza Haji (Supra)* to contend that an order obtained by fraud vitiates the decision of the Court and secondly, the application under Section 125 (3) of the Cr.P.C. for execution has been filed after a period of one year.

Although, the writ petition is not maintainable because the impugned order has been passed in execution of an order passed under Section 125 of the Cr.P.C. and the appropriate remedy available with the petitioner is of filing a criminal revision but since the petitioner has insisted too much that the writ petition is maintainable for the alleged fraud played by respondent No.1, therefore, the present petition is being decided on merits.

At the outset, there is no dispute about the law laid down by the Hon’ble Supreme Court in the case of *Hamza Haji (Supra)* but the issue involved in this case is as to whether the plea of any kind of fraud can be pressed by the petitioner at this stage because the order dated 9.8.2017 has been upheld upto the Hon’ble Supreme Court?

The petitioner has argued that the order dated 09.08.2017 has

said order has been upheld by this Court vide order dated 31.10.2017 when CRR (F) No.440 of 2017 filed by the petitioner was dismissed. No such plea was taken by the petitioner at that time. However, he had argued that his application filed under Section 340 of the Cr.P.C. before the Family Court has been wrongly dismissed but the said order of the Family Court dismissing the application of the petitioner filed under Section 340 of the Cr.P.C. was upheld by this Court specifically observing that it has rightly been dismissed by the Family Court. The petitioner tried his luck before the Hon'ble Apex Court while challenging the order dated 31.10.2017 as well but remained unsuccessful and that was the end of the matter. The petitioner cannot rake up the same issue in the execution of the order dated 9.8.2017, therefore, the Executing Court much less the Family Court, Sonipat has rightly rejected his contention about the fraud and also observed that the petitioner has leveled general and vague allegations whereas the fraud has to be proved like a criminal case is decided. As regards the limitation, the Family Court has rightly observed that the application for execution was within limitation because the order was passed on 9.8.2017 and the execution application was filed on 14.8.2017.

Thus, looking from any angle, there is no error found in the impugned order for the purpose of interference in this case and hence, the writ petition is hereby dismissed though without any order as to costs.

29.05.2018

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking /reasoned : *Yes/No*

Whether Reportable : *Yes/No*