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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 3rd October, 2018

+ CRL. M.C. 5014/2018 and Crl.M.A.33325/2018

DINESH KUMAR

..... Petitioner

Through: Mr. Anip Sachthey, Advocate
with Ms. Anjali Chauhan, &
Ms. Ria Sachthey, Advocates

versus

RUCHI AHUJA

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The respondent has instituted proceedings against the petitioner and his parents by filing a petition (CC No.229/1/2010) in the court of Metropolitan Magistrate under Section 12 of Protection of Women from Domestic Violence Act, 2005 (for short, the DV Act) seeking various reliefs including protection orders under Section 18 and an order as to right to residence under Section 19 besides other monetary reliefs. The main petition is concededly pending inquiry, it being an admitted case that the parties were married to each other on 14.10.2007 as per Hindu rites and customs, the relations having turned sour which, as per the case of the respondent (wife), on account of “domestic violence”, the parties living separately. It appears the daughter born out of this wedlock has been in the care, custody and control of the respondent.

2. In the context of right to residence by the main petition under Section 12 of the DV Act, the respondent (wife) has prayed for direction to the petitioner (husband) to provide to her a three room set accommodation in South Delhi for her unhampered and continuous use, it being prayed, in the alternative, that if such premises were to be taken on rent, the liability to pay such rent regularly be fastened against him. Germane to this prayer, as indeed to certain other prayers, is the averment (in para 19 of the main petition) by the wife to the effect that the husband had “*bought*” a residential property, for consideration of Rs.37 lacs, in June, 2007, it being described as flat at 905 Tower II, Mahagun Mosaic Off Dabur Chowk, Vaishali, Ghaziabad. The petition under DV Act is being contested by the petitioner with plea of denial of acquisition of such residential property by him.

3. The wife had also made a prayer to the Magistrate for interim orders to be granted in her favour including on the subject of right to residence. The issues concerning interest, if any, in the said residential flat of Vaishali, Ghazibad had come up for consideration before the Metropolitan Magistrate and the first appellate court (court of Sessions) in such context and the submissions of the petitioner that the said property is owned by his father – also a respondent in the main petition, were accepted.

4. Against the above backdrop, the wife had moved an application under Section 91 of the Code of Criminal Procedure, 1973 (Cr.P.C.) before the Magistrate asserting that the husband had made certain

misrepresentations vis-à-vis the booking or ownership of the said residential flat stating, *inter alia*, that he had “*transferred the same in a clandestine manner in connivance with the builder to defeat the right of residence*”. She made a prayer for certain relevant documents to be summoned from certain quarters to sub-serve the interest of justice, the documents including loan application made by the husband in July, 2007 to AXIS Bank, the account statements of the Bank accounts of the husband and of his father and mother (respondents in the DV Act petition) as maintained with seven specified Banks. It was her submission that such details and records would enable the court in adjudicating on the rights and contentions of the parties, vis-à-vis the said property.

5. The prayer in the application under Section 91 Cr.P.C. was rejected by the Metropolitan Magistrate to the extent it was directed against the parents of the husband (petitioner herein), with reference to the reasons which had weighed at the time of rejection of the prayer for interim order towards right to residence by the first appellate court in its decision dated 26.09.2015 and also with the observation that no roving inquiry could be made regarding their assets as they had no liability to maintain her. The, petitioner, however, was directed to file an affidavit, disclosing the details of his bank accounts along with statements of accounts for the preceding three years.

6. The husband, feeling aggrieved by the order dated 06.08.2016 of the Metropolitan Magistrate issuing directions to him approached the court of Sessions by Criminal Appeal No.47/2016, which was

dismissed by order dated 19.05.2018, *inter alia*, observing that the impugned order was purely a procedural order which did not decide or determine the rights or liabilities of the parties.

7. The present petition has been brought by the husband invoking the inherent power of this court under Section 482 Cr.P.C. to assail the order dated 19.05.2018 of the first appellate court, as indeed the order dated 06.08.2016 of the Metropolitan Magistrate binding him with obligation to comply with the directions passed in the aforesaid nature.

8. Having heard the learned counsel for the petitioner (husband) at length, and having gone through the record, this court finds no substance in the petition, the same calling for dismissal at the threshold.

9. Indeed, it has been the contention of the petitioner, as also of his parents, in contest to the main petition under Section 12 of DV Act, that the residential flat mentioned above, is owned by his father (also a respondent before the Metropolitan Magistrate). It appears that some documents were placed before the Metropolitan Magistrate supporting the contention that the said residential flat was booked for allotment with the builder by the father and not by the petitioner husband. It also appears that the property was allotted and handed over to the father, a Sale Deed having been executed in his name on 30.11.2009. But, it is also an undisputed case that the property was acquired in the name of the father with the aid and assistance of the petitioner (husband) he having raised a loan statedly of Rs.17 lacs in his name from the Bank. It does appear that there are some documents showing

that the loan was repaid by the father of the petitioner. But then, such claim is to be seen against the backdrop of the pleadings of the petitioner (husband) that his father was unable to raise finances on his own since he was not employed anywhere at the relevant point of time.

10. An interim order on right to residence was declined to the wife, and also by the first appellate court (in Criminal Appeal No.06/2015) by decisions taking note of the facts, amongst others, that the property stands in the name of the father of the husband and not in his name. The said tentative conclusions, however, were recorded so as to deal with the prayer for interim relief. From this perspective, such conclusions cannot be treated as final or clinching.

11. The wife having been denied any interim order cannot be deprived of the right to prove her case by leading evidence so as to demolish and discredit the defence which has been set up vis-à-vis the said property. It is her contention that the property was acquired by the husband availing of his own resources, though in the name of the father and, therefore, *benami*. It is her burden to prove her contention in such regard. In these circumstances, her right to bring requisite evidence, by having the necessary records summoned with the assistance of the court, cannot be taken away.

12. It is not correct on the part of the husband to argue that the issues vis-à-vis the said residential property will have to be treated as having been finally determined by afore-mentioned interim orders. The issues of fact concerning such property are still open in the

context of the main petition and the wife is entitled to adduce the necessary proof in support of her pleadings which cannot be grudged.

13. The petition and the application filed therewith are dismissed in *limine*.

R.K.GAUBA, J.

OCTOBER 03, 2018

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