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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 4816/2015 & CrI.M.A. 17393/2015, 2071/2017**

SUNIL KUMAR SHARMA Petitioner
Through: Md. Azam Ansari, Adv. with
petitioner in person.
versus

MS PREETI SHARMA Respondent
Through: Mr. Pankaj Mendiratta & Ms. Richa
Singh, Advs. with mother of the
respondents in person.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER
% **31.10.2018**

These proceedings arise out of a petition (CC no. 97/1/2010) instituted on 19.03.2010 by the respondent against the petitioner under Section 12 of Protection of Women from Domestic Violence Act, 2005 seeking various reliefs. Concededly, the petitioner and the respondent were married to each other on 22.05.1997. Two children, both daughters namely Manu & Khushi took birth out of the said wedlock on 12.11.1998 and 05.12.2003 respectively, they being in the care and custody of the respondent wife. The parties had some differences, the case of the respondent being of she having been subjected to domestic violence. They having started to live separately over a period of time have come to be locked in litigation including the aforesaid petition before the Metropolitan Magistrate and separate proceedings pending before the Family Court where the respondent wife has sought a decree of divorce while the daughters also

instituted proceedings for maintenance allowance.

By order dated 04.02.2015 passed by the Metropolitan Magistrate in the domestic violence case, maintenance allowance at the rate of Rs. 15,000/- per month each in favour of the two minor daughters was fixed, besides a direction for compensation to the daughters in the sum of Rs. 5 lakhs each in the form of fixed deposit receipts to be taken out by the petitioner husband.

The petitioner challenged the said order before the court of sessions by Crl. Appeal 63/2015. The appeal was dismissed by order dated 27.08.2015 with costs of Rs. 1 lakh. The petitioner has come up to this Court by the present petition under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C) assailing the said orders of the two courts below.

At the hearing, it was brought out that on the application (M no. 108/2012) for interim maintenance moved for and on behalf of the two minor daughters, the Principal Judge for South District at Saket, by her order dated 14.10.2015 found a case made out for interim maintenance allowance in the sum of Rs. 10,000/- per month to be paid to each of the said two children w.e.f. 22.04.2013, which is the date of the filing of the said petition till further orders. The prayer in the main petition for maintenance allowance is yet to be adjudicated upon by the Family Court.

After some hearing, it was agreed by the both sides and jointly submitted through their respective counsel, that the interim maintenance order granted by the Family Court by its order dated 14.10.2015 may be adopted as the rate at which maintenance allowance is to be paid by the petitioner for the two daughters in the context of domestic violence case

as well, though having regard to the fact that the said domestic violence case was instituted on 19.03.2010, his liability to pay the said amount of maintenance allowance be made effective from the said date i.e. 19.03.2010. Ordered accordingly.

As a result of the above-mentioned modification of the order of maintenance allowance in the context of the domestic violence case, the petitioner will be obliged to pay the arrears for the period 19.03.2010 till 21.04.2013 inasmuch as the directions in the interim maintenance allowance granted by the Family Court came into effect from 22.04.2013. The petitioner's counsel submitted that he has reserved his right to challenge the order of the maintenance allowance awarded by the Family Court by appropriate proceedings and subject to such remedy being availed, he undertakes to pay arrears of the maintenance allowance in the context of domestic violence case within a period of six months hereof in equal instalments, over and above the monthly allowance that is to be paid, the first instalment of arrears being payable on or before 15th November, 2018 followed by similar payments of arrears by 15th of each consecutive month.

Needless to add, the two daughters of the parties will not be entitled to the maintenance allowance twice over, the amount paid in proceedings before the Family Court being adjustable against the liability arising out of the maintenance allowance fixed in the domestic violence case and vice versa. The amounts already paid will be liable to be adjusted and the concerned court(s) will take such earlier payments into account while enforcing the modified order.

As noted earlier, the Metropolitan Magistrate by the impugned order

has also directed the petitioner to pay Rs. 5 lakhs each in the form of fixed deposit receipts for the two daughters. The petitioner, through counsel, submits that he is ready and willing to comply with such directions though without prejudice to his contentions that the allegations of domestic violence are false. He is, however, unable to immediately muster the requisite finances to abide by the said direction and needs six months time to make the deposit of Rs. 5 lakhs in the name of the first (elder) daughter and another six months thereafter for complying with the direction *vis-à-vis* the younger daughter. The counsel for the respondent submits that she reluctantly agrees to this in the hope that the directions will now be abided by. The petitioner is bound by the undertaking given and will be obliged in its terms to deposit Rs. 5 lakhs in the form of fixed deposit receipt in the name of the elder daughter within six months hereof and similar amount in similar manner in the name of the younger daughter within six months thereof.

The cost of Rupees One Lakh imposed by the first appellate Court is waived in view of the undertakings given by the petitioner.

The petition and the pending applications are disposed of in above terms.

R.K.GAUBA, J

OCTOBER 31, 2018

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