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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.REV.P. 324/2018 & CRL.M.A.6940/2018**

AKASH DEEP

..... Petitioner

Through: Ms. Siddhi Mittal, Adv.

versus

RAMO DEVI

..... Respondent

Through: Mr. Jayesh Kain, proxy counsel
for Mr. Yudhvir Singh
Chauhan, Adv.

CORAM:

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

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21.02.2019

1. The petitioner has filed the present revision petition under Section 401 of the Code of Criminal Procedure, 1973 (Cr.P.C.) read with sub-section (4) of Section 19 of the Family Courts Act, 1984 and Section 482 of the Cr.P.C. assailing the order dated 6.2.2018 passed by the learned Principal Judge, (South District), Saket Courts Complex, New Delhi, whereby interim maintenance was granted to respondent in case tilted as “Ramo Devi v. Akashdeep” being M.No.176/2017.

2. The Trial Court vide the impugned order, has held as under:

“5. Since the marriage was solemnized at Arya Samaj Mandir and a certificate of marriage is on record; this court as of now can not record finding that the marriage was under coercion or is null and void. Moreover, the respondent is a responsible government official, who is deemed to know the consequences of his action. Prima

facie this court is not accepting that the respondent solemnized this marriage under coercion. Therefore, the argument that it was a null and void marriage is rejected. Further, the findings of Ld. MM is not binding upon this court. Award of compensation u/sec.-357 (A) Cr.P.C. would not disentitle the petitioner to claim maintenance for her sustenance.

6. Though, she is a post-graduate and capable of working and earning; yet, considering the fact that she is still a student and is preparing for Civil Services Exams, this court is of the opinion that she be granted interim maintenance. Payslips of the respondent for the months of January-2017 and October-2017, which are on record reflect a gross income of Rs.55,461/- and Rs.63,378/-, respectively. The net income after statutory deductions in both the salary slips is Rs.45,939/- and Rs.56,617/- respectively. By rough estimate, respondent's disposable income can be assessed at Rs.45,000/- per month. Applying the principles of law laid down in ***Annurita Vohra Vs. Sandeep*** reported as (2004) 1 DMC 568 DEL, the petitioner is entitled to 1/3rd of the disposable income of the petitioner. Accordingly, interim maintenance for the petitioner is assessed at Rs.12,000/- per month.

8. Accordingly, the non-applicant/ respondent shall pay an amount Rs.12,000/- per month towards the interim maintenance to the applicant/ petitioner w.e.f. filing of the petition i.e. 19.08.2017. Arrears be cleared within 6 months in 6 equal monthly instalments. The amount of maintenance, as well, as instalments of arrears be deposited in the bank account of petitioner by respondent by 10th day of each calendar month. “

3. Learned counsel for the petitioner submitted that the petition under Section 12 (1)(c) of the Hindu Marriage Act, 1955 (the Act) is pending before the Family Court wherein the petitioner has contended that the marriage between the parties was solemnized under coercion,

hence is nullity.

4. It is also argued by the learned counsel for the petitioner that the respondent is not entitled to interim maintenance in view of the pendency of the petition under Section 12 of the Act.

5. Learned counsel for the petitioner also submitted that the respondent is a post-graduate and capable of working and earning. It is further submitted that the respondent has filed two FIRs against the petitioner as counter-blast to the petition under Section 12 of the Act.

6. Learned counsel for the respondent opposed the submissions of the learned counsel for the petitioner and relied on the findings of the Trial Court in the impugned order.

7. I have gone through the impugned order.

8. Learned counsel for the petitioner, on the query of the Court, submitted that there is a certificate of marriage which subsists as on date. The certificate of marriage proves that the marriage was solemnised between the parties at Arya Samaj Mandir and that certificate of marriage was issued after the marriage was solemnised between the parties. Hence, this Court cannot overlook the same at this stage and cannot hold, as submitted by the learned counsel for the petitioner, that the marriage was under coercion or is null and void. At the stage of the grant of the interim maintenance, *prima-facie*, the Court has to look into the admitted facts which in the present case is that the marriage was solemnised at Arya Samaj Mandir and that there is a certificate of marriage, hence, the pendency of the petition under Section 12 of the Act does not, in any manner, bar the grant of the interim maintenance to the respondent. In case the submission of the

learned counsel for the petitioner is accepted by this Court that simply pendency of any petition under Section 12 of the Act can debar any respondent from the grant of interim maintenance it will create havoc in the society. Such a contention cannot be accepted by the Courts otherwise there will be no end to false and frivolous litigations. It is clarified that that observation on false and frivolous litigation is not being made by this Court in respect of the petition under Section 12 of the Act pending between the parties. However, this cannot, in any manner, restrain the Court from passing the order of grant of interim maintenance.

9. So far as the contention of the learned counsel for the petitioner is concerned that the petitioner is a post-graduate and capable of earning and working, the Trial Court has certainly taken into consideration this fact and rightly held that though the respondent is capable of working and earning but she is still a student and preparing for the Civil Services Exams. The Trial Court was correct in holding that she should be granted interim maintenance.

10. I have also gone through the calculations made by the Trial Court in para No.6 of the impugned order holding that the disposable income of the respondent can be assessed at Rs.45,000/- per month and similarly, granting 1/3rd of the disposable income of the petitioner as interim maintenance to the respondent @ Rs.12,000/- per month, which I find is in consonance with the law laid down by the Courts, from time to time, more so in the matter of *Annurita Vohra Vs. Sandeep Vohra* (2004) 110 DLT 546.

11. The impugned order is for the grant of the interim maintenance

and the petition is still pending before the Trial Court for the purpose of evidence of both the parties. If there would be any material proving anything regarding the income earned by the respondent, the Trial Court shall certainly take that into consideration and can adjust the maintenance, if any, the respondent is held entitled at the time of final disposal of the petition.

12. In view of the aforesaid, I do not find any infirmity or flaw in the impugned order of the Trial Court. Accordingly, the petition is dismissed. Pending application also stands dismissed. The parties are left to bear their own costs.

CHANDER SHEKHAR, J

FEBRUARY 21, 2019/rk