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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 9th May, 2019

+ Crl.M.C. 3380/2016 & Crl.M.A. 14328/2016

RACHANA MADAN & ANR.

..... Petitioners

Through: Ms. Divya Sharma, Adv. along
with petitioner no.1 in person.

versus

SUNIL MADAN

..... Respondent

Through: Mr. Trideep Pais, Ms. Sanya
Kumar & Mr. Ranjay N.,
Advs.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. This case should go down in history as yet another illustration of how half-baked solutions, with loose ends, brokered by the parties through their counsel in the ongoing proceedings lead to confusion and protracted proceedings. The first petitioner is the estranged wife of the respondent (husband), the second petitioner being their daughter (born on 04.04.1991). The first petitioner (wife) had instituted proceedings under Section 12 of Protection of Women from Domestic Violence Act, 2005 (DV Act) in the year 2007, it having been registered as CC no.358/1. The proceedings have remained unresolved till date, some reasons for this to be traced hereinafter in this order.

2. The respondent (husband) resisted the case under DV Act and had challenged its maintainability by CrI.MC. 3071/2008. On 27.05.2009, when the matter came up for hearing, question of expenses of education of the daughter (second petitioner) arose. It appears that the daughter had secured provisional admission to a course leading to the degree of Bachelor of Arts (Media and Communication) in the University of Melbourne, Australia. The wife indicated at that stage that the course was of three years' duration, the approximate expenditure required to be incurred being Rs.37 lakhs. The wife had also informed the court that for purposes of securing visa, security to the extent of the above amount will also have to be furnished. The husband submitted an undertaking, without prejudice to his rights and contentions, "*to pay the entire fees for the course in Australia*". For purposes of security, the parties agreed to work out some long term solution by going in for mediation. The undertaking to foot the expenses towards fees for the above mentioned course in Australia was reiterated on 29.05.2009 and recorded accordingly in the proceedings. The parties were also referred to Delhi High Court Mediation and Conciliation Centre to make attempt to resolve their disputes amicably.

3. The issues persisted till the parties agreed to settle amicably by entering into a settlement deed dated 02.06.2011. As per the copy of the said settlement deed, the wife had indicated that the expenditure towards the education of the daughter in Australia was in the region of Rs.37.11 lakhs this including fees and living expenses. It was clearly stated in the settlement deed that husband had already borne

substantial part of the said amount, only Rs. 15 lakh remaining to be paid towards the undertaking given by him on such account. The husband agreed, by the said settlement deed dated 02.06.2011, to pay the remaining amount so that the daughter could start the second year study of the three year course, she already having dropped a semester due to non-payment of funds towards her tuition fees.

4. It appears that the parties have also been involved in a dispute respecting title to property bearing nos.C-1224-1225, at Shushant Lok, Phase-I, Gurgaon, Haryana. It may be mentioned here that the said property comprises of two different residential plots, they having been acquired in the name of the first petitioner (i.e. the wife), the possession at that stage concededly being with the respondent (i.e. the husband). A civil suit (no. 393/2008) had been filed by the husband in the District Court at Gurgaon, Haryana in such regard. To settle the disputes in entirety, the husband also agreed by the settlement dated 02.06.2011 to withdraw the civil suit and hand over the possession along with title deeds of the property to the wife within fifteen days of signing of the said document.

5. It may be mentioned here that subsequent proceedings, pleadings, orders and submissions show that title deeds of both plots and the vacant possession of plot no. C-1225, Sushant Lok, Phase-I, Gurgaon were handed over by the husband unto the wife, there being difficulty faced *vis-a-vis* plot no. C-1224, since it was found to be in occupation of a third party. Though some grievance has been raised in this regard by the petitioner before the Metropolitan Magistrate in the proceedings under DV Act leading to order dated 02.09.2014 and

thereafter in the first appellate court by criminal appeal no. 25/2014, the learned counsel for the petitioner, having taken instructions from the first petitioner, who is present in person with her in the Court, submits that no relief is pressed in the present petitions respecting unauthorised occupation of plot no.1224, Sushant Lok, Gurgaon, Haryana for the reason that third party interest is involved, the petitioners now acknowledging that appropriate remedy would be by filing a case in the civil court qua the possession of such property wherein the respondent necessarily also will have to be included as a party.

6. Reserving the right to seek vacant possession of the above-mentioned plot at Sushant Lok, Phase-I Gurgaon, Haryana, by independent proceedings in the civil court, the present petition is pressed only insofar as the claim of the petitioner for higher/escalated amount towards the educational expenditure of the daughter is concerned.

7. The petition of the respondent (Crl.M.C. 3071/2008) seeking quashing of the case of the first petitioner under Section 12 of DV Act was decided by order dated 02.06.2012, certain observations in (para 16 of) the said order are of some import here and may be extracted as under:-

“16. With regard to the claim of the educational expenses of their daughter, the petitioner had been maintaining that this being his responsibility, he shall bear all the expenses of education and maintenance of his daughter till she is married or able to maintain herself. That aspect will also be further determined by the M.M. as from the material available on record, it is

not gathered as to whether the daughter still continues to be entitled to maintenance by the petitioner”.

(emphasis supplied)

8. The learned single Judge by final order dated 02.06.2012 in CrI.M.C. 3071/2008 had remitted the matter to the Metropolitan Magistrate for deciding the remaining issues and passing appropriate orders, the issues essentially covering the right of the first petitioner to seek additional amount from the respondent towards expenses of education and maintenance of the daughter. This led to some further proceedings before the Metropolitan Magistrate eventually culminating in order dated 02.09.2014, the claim of the petitioner (wife) to seek reimbursement of expenses over and above the amount of Rs.37.11 lakhs, as had been agreed upon by the settlement agreement dated 02.06.2011, having been repelled by said order dated 02.09.2014.

9. It may be noted here that the petitioners are claiming amount beyond Rs. 37.11. lakhs towards educational expenditure of the daughter for the above-mentioned course in Australia on the ground that due to delay in payment of the remainder Rs. 15 lakhs by the respondent, there had been additional expenditure which required to be incurred, it having escalated upto the total amount of Rs. 54 lakhs. The respondent, on the other hand, disputes and denies that there was any delay on his part, his position being that he had paid the amount of Rs. 15 lakhs well in time.

10. After some hearing, it is fairly conceded by learned counsel on both sides that there has been no determination till date of the issue of

delay and consequent escalation of expenditure required to be borne by the wife for the above-mentioned course of the daughter in Australia. In this view, the parties through their counsel now agree that the matter requires to be remitted to the Metropolitan Magistrate for adjudication on the said issue on the basis of evidence, the wife (first petitioner) having already incurred the requisite expenditure, the daughter having already successfully completed the said course, the claim now being more in the nature of one of re-imbursement of the additional expenditure that was incurred on account of alleged delay in payment of remainder Rs. 15 lakhs by the husband.

11. Necessarily, in the given facts and circumstances, the burden to prove not only the delay but also the additional expenditure flowing from such delay will be placed at the door of the first petitioner who so contends. This issue will be decided by the Metropolitan Magistrate, along with other issues which are pending, in the inquiry on the main petition under DV Act. It is directed that appropriate orders will be passed at the culmination of the pending inquiry on the basis of such evidence on the above issue as well.

12. With these observations and directions, the petition and the pending application are disposed of.

R.K.GAUBA, J.

MAY 09, 2019

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