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

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Judgment delivered on: 05.04.2019

+ CRL.REV.P. 280/2015 & CrI. M.A. 7019/2015

SURENDER SINGH ARYA

..... Petitioner

versus

MEENU ARYA

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Abhimannu Kampani and Mr. Samarth Teotia, Advs.
with petitioner in person.

For the Respondent: Ms. Manika Tripathy Pandey, Mr. Ashutosh Kaushik, Mr.
Brahm Kr. Pandey, Advs. with respondent in person.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 26.02.2015 whereby the trial court has accepted the application of the respondent for restoration of the petition; dismissed on 08.10.2012 and restored the same.

2. Learned counsel for the petitioner submits that the respondent had substantially delayed the proceedings and as such the trial court was constrained to pass a judgment on 08.10.2012 dismissing the petition.

3. Learned counsel submits that the judgment dated 08.10.2012 passed by the trial court was an order on merits and could not have been recalled merely on the ground of seeking restoration of the petition and the only remedy available to the respondent was to file an appeal, impugning the said judgment. Learned counsel further submits that the trial court has returned a finding that respondent was deliberately trying to delay the proceedings and did not want to pursue the same.

4. Per Contra, learned counsel appearing for the respondent submits that the respondent is the estranged wife of the petitioner and had filed subject proceedings under Section 125 of the Cr.P.C. claiming maintenance. It is submitted that interim maintenance was awarded by the trial court at a meagre amount of Rs. 2,000/- per month.

5. Learned counsel for the respondent submits that the respondent is suffering from severe Asthma besides other ailments and as such was unable to appear before Court and exemption applications on medical grounds were filed, which were duly considered and allowed from time to time.

6. Learned counsel for the respondent further submits that the medical expenditure of the respondent on her treatment was far in excess of the interim maintenance amount. She submits that the interim maintenance awarded was insufficient to meet her medical

expenditure leave alone her day to day subsistence expenditure.

7. It is submitted that even if the maintenance were to be calculated based on minimum wages, it would have been much higher than Rs. 2,000/- per month and as such there was no reason for the respondent to delay the proceedings.

8. Learned counsel for the respondent further submits that judgment dated 08.10.2012 of the trial court in effect was an order closing her evidence as she had failed to appear and her evidence filed by way of affidavit was disregarded and the trial court held that there was no evidence filed and thus her petition seeking maintenance was dismissed.

9. The facts of the case show a very grim picture. Parties were married on 20.04.1998 and separated on 12.10.1998. Respondent initiated subject proceedings on 14.05.2003 under Section 125 Cr.P.C. claiming maintenance. Trial court granted interim maintenance @ Rs. 2000/- per month. Proceedings remained pending from 2003 till 2012. During the said period also, despite the fact that maintenance was awarded only at Rs. 2,000/- per month, the petitioner-husband did not comply with the order and respondent was constrained to file execution petitions from time to time to recover the awarded amount.

10. On 08.10.2012, the Respondent – wife was not present. Her father moved a hand written application seeking exemption from appearance on the ground that she was not well and was referred to a

government hospital. Said application was rejected and the court closed her evidence and as there was no evidence on record pronounced the judgment dismissing the petition holding that she had failed to prove that she was the legally wedded wife of the Petitioner.

11. Respondent filed the application seeking recall of order dated 08.10.2012 on 05.11.2012. Said application came to be decided on 26.02.2015 after the gap of nearly 2-½ years. Respondent filed the present revision petition on 06.05.2015. Subject revision petition has also remained pending till today i.e. for nearly four years.

12. Respondent has been litigating all these years since 2003 seeking maintenance. She was awarded maintenance at a meagre amount of Rs. 2,000/- per month. Petitioner husband did not even comply with the order for grant of interim maintenance and the wife had to file execution petitions seeking recovery of even that amount.

13. Trial Court by its judgment dated 08.10.2012 has held that as the Respondent – wife has not led any evidence; she has failed to prove that she is the legally wedded wife of the Petitioner and thus is not entitled to maintenance.

14. What the Trial Court has erred in not appreciating is that there was no dispute about the factum of marriage between the parties. Even before this court, the factum of marriage has not been disputed. In Paragraph XX of the grounds mentioned in the Revision Petition, the Petitioner – Husband has stated as under:

“XX) For the Petition under section 125 CrPC is nothing but an abuse of process of law filed malafidely with an intention to harass the Petitioner. That no dowry was taken or demanded at the time of marriage for the marriage was a love marriage solemnised at an SDM Court.”

15. The averments in the Revision Petition itself establishes that there is no dispute with regard to factum of marriage. Even if assuming there is no evidence on record, Trial Court can still pass an order of maintenance, if there are admissions on record. In the present case, Trial Court has dismissed the petition only on the ground that factum of marriage has not been proved.

16. At this stage to accept the plea of learned counsel for the petitioner that order dated 08.10.2012 was in fact a judgment and respondent should have filed an appeal, would amount to an exercise in futility and gross harassment of the respondent as the judgment of the Trial Court would be set aside for the asking; because the finding returned that factum of marriage has not been proved is contrary to record because the factum of marriage is not in dispute.

17. Application under Section 125 Cr.P.C. was filed as far back in the year 2003 and interim maintenance of only Rs. 2,000/- was awarded and it would not be in the interest of the Respondent – wife to delay the proceedings. She would not benefit from any delay. Even as on date, petitioner is in substantial arrears of maintenance.

18. I am of the view that it would not be in the interest of justice to accept the plea of the petitioner and to relegate the respondent to filing an appeal.

19. Medical record of the Respondent – wife has been produced in Court. I am satisfied that the respondent had sufficient ground for not appearing before the concerned court on 08.10.2012. Further, the Trial Court itself had considered the medical records and granted exemption to the respondent – wife from time to time.

20. Keeping in view the peculiar facts and circumstances of the case in mind, I am of the view that interest of justice would be served by not interfering with the impugned order restoring the petition filed by the respondent to its original number and rejecting the petition.

21. Learned counsel for the petitioner, under instructions from the petitioner, submits that the petitioner shall clear the entire arrears of maintenance and pay the same to the respondent on the next date of hearing before the trial court i.e. 12.07.2019.

22. In view of the above, the petition is dismissed. Interim order dated 07.07.2015 is vacated.

23. Order *Dasti* under signatures of Court Master.

APRIL 05, 2019
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SANJEEV SACHDEVA, J